IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.01.2020
CORAM :
THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN
T.C.A.No.11 of 2020
and
C.M.P.No.368 of 2020

Suneel Hirachand Shah
No.178, Old No.88,
NSC Bose Road,
Sowcarpet, Chennai 600 079.
[PAN AAOUPS 4435F] ... Appellant

Vs

The Income Tax Officer,
Non Corporate Circle 6(1),
II Floor, Room No.223,
BSNL Complex, Tower 1,
Greams Road, Anna Salai,
Chennai 600 006. ... Respondent

PRAYER : Appeal under Section 260A of Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, "C" Bench, Chennai in S.P.No.319/CHNY/2019 in I.T.A.No.3197/CHNY/2019 dated 09.12.2019 against the Appellate order passed by the Commissioner of Income Tax(A)-5 Chennai, dated 31/10/2019 in ITA.No.210/CIT(A0-5/2018-19, and

against the Assistant Commissioner of Income Tax, Non-Corporate Circle-6(1) Chennai-600 006 dated 28/12/2018 13/11/2018 made in PAN/GIR.No.AOUPS4432F.

For Appellant :Mr.R.Sandeep Bagmar

For Respondent :Mr.T.Ravi Kumar
Senior standing counsel

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The Appeal has been preferred against the dismissal of stay petition filed by the assessee/appellant in the ITA filed by the Appellant agianst the order of the Appellate Commissioner confirming the addition made by the Assessment Officer.

2.The case of the appellant is that he has purchased shares in Twenty First Century India Limited between October 2004 and November 2004 and he has sold the shares only in 2010 and he is entitled for exemption u/s.10(38) of the Income Tax Act, 1961. The Assessment Officer disallowed the claim and the same was confirmed by the Appellate Commissioner. In the Appeal, the Tribunal found that there is no prima facie case in favour of the appellant, on the premise that the incriminating materials, based on the report provided by SEBI and Director of Investment, Kolkatta prove that these transactions are bogus.

3. The Tax Case Appeal is admitted on the following substantial questions of law:

(i) Whether the Tribunal was correct in dismissing the request for stay of demand without considering the complete facts and circumstances of the case of the Appellant?

(ii) Whether the Tribunal was correct in dismissing the request for stay of demand when the Appellant has strong prima facie case on merits, the assessment order being without jurisdiction and in complete violation of principles of natural justice?

(iii) Whether in the interest of justice, equity and fairness the Appellant should be granted stay of balance tax demand when it has made a prima facie case on merits, the balance of convenience is in faovur of the Appellant and undue hardship will be caused to the Appellant if further tax demand is to be paid?

4.Heard Mr.R.Sandeep Bagmar, learned counsel appearing on behalf of the appellant and Mr.T.Ravikumar, learned Senior Standing counsel appearing on behalf of the respondent.

5.Though there are arguments and rival arguments with regard to genuineness of transactions, this Court is not inclined to go into the issues at this stage. The only question to be decided is as to whether the Tribunal is right in dismissing the stay petition. The learned counsel appearing for the appellant has produced a computation table which shows that the tax demanded is Rs.34,12,174/- and interest on tax is Rs.27,86,838/- and the total tax and interest is Rs.61,99,012/-, whereas he has paid Rs.15,71,293/-.

6.Though the Tribunal found that there is no prima facie case in view of the incriminating documents, considering the fact that the appellant had already deposited a sum of Rs.15,71,293/-, out of demand of Rs.61,99,012/-, the Interest of Justice will be complied with by directing the appellant to deposit a further sum of Rs.15,00,000/- in three equal installments, each installments should be paid within 15 days of every month. On such payment, the dismissal order passed by the Tribunal in the stay petition is set aside and there shall be an order of interim stay till the disposal of the Appeal before the Tribunal. The question of law is answered in the above terms. It is open to the Tribunal to get along with the matter and dispose of the matter at the earliest, in accordance with law.

7.Accordingly, this Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Asst.Registrar (CS V)

/true copy/
Sub Asst. Registrar

To

1.The Income Tax Officer,
Non Corporate Circle 6(1), II Floor, Room No.223,
BSNL Complex, Tower 1, Greams Road,
Anna Salai, Chennai 600 006.

2.Income Tax Appellate Tribunal 'C' Bench,
Chennai.

3.The Commissioner of Income Tax(A)-5
Chennai

4.The Assistant Commissioner of Income Tax,
Non-Corporate Circle-6(1)
Chennai-6

+1 cc to Mr.Sandeep Bagmar Advocate sr3628

+1 cc to Mr.T.Ravikumar Advocate sr3630

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