IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 7550 of 2018
and
W.M.P. Nos. 9414 to 9416 of 2018
and
W.M.P. No. 18733 of 2018

M/s. Fuso Glass India Pvt. Ltd.
Rep. by its Director
91, Poonamallee High Road
Chennai - 600 084. ... Petitioner

-vs-

1. The Deputy Commissioner of Income Tax
Corporate Circle 2(1)
No.121, M.G.Road, Nungambakkam
Chennai - 600 034.

2. The Income Tax Officer
Ward 2(4)
Venus Chowk Dhar Road
Udhampur - 182 101.

3. Tax Recovery Officer
Income Tax Department
Aaykar Bhawan Rail Head Complex
Panama Chowk, Jammu.

4. The Manager
Indian Overseas Bank
Nungambakkam Branch
109, Nungambakkam High Road
Chennai - 600 034. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the Third Respondent and quash the notice issued to the Fourth Respondent in F.No. CIT/TRO/JAMMU/2017-18/526 dated 22.03.2018 as illegal, without jurisdiction and authority of law and consequently, direct the Fourth Respondent to lift the Lien on petitioner company's bank account.

For Petitioner : No appearance

For Respondents: Mr. Prabhu Mukunth Arunkumar
Junior Standing Counsel (for R1 to R3)
No appearance (for R4)

O R D E R
(through video conference)

There is no representation for the Petitioner and the Fourth Respondent, when the matter is called at 11.10 a.m. and 4.40 p.m.

2. Heard Mr. Prabhu Mukunth Arunkumar, Learned Junior Standing Counsel appearing for the First to Third Respondents and perused the materials placed on record, apart from the pleadings of the parties.

3. The Third Respondent by notices in F.No.CIT/TRO/JAMMU/2017-18/337 dated 11.01.2018 and F.No.CIT/TRO/JAMMU/2017-18/338 dated 11.01.2018 under Section 226(3) of the Income Tax Act, 1961 had required the Petitioner to remit the sum of Rs.12,44,14,299/- due each from Sh. Hitesh Kothari and Sh. Madan Lal B.Jain on account of income tax and interest for the assessment years 2010-2011 to 2012-2013 and informed that in the event of non-payment of those amounts, the Petitioner would be deemed to be an assessee in default for which the consequential action would be taken. According to the Petitioner though a reply dated 29.01.2018 had been sent to the Third Respondent stating that the Petitioner does not owe any amount to the said persons in respect of whom income tax dues has been claimed, the Third Respondent by another notice in F.No.CIT/TRO/JAMMU/2017-18/526 dated 22.03.2018 had called upon the Fourth Respondent, who is the banker of the Petitioner to pay the said amounts from the accounts held by the Petitioner with the Fourth Respondent. Aggrieved thereby, the Petitioner has filed this Writ Petition challenging the said order.

4. Learned Standing Counsel appearing for the First to Third Respondents has produced written instructions from the Third Respondent regarding the present stage of the income tax liabilities of the said Sh. Hitesh Kothari and Sh. Madan Lal B.Jain, which reads as follows:-

> " A.Y. 2010-11 & 2011-12
>
> The assessee's case was assessed u/s 143 (3) for the AY 2010-11 & 2011-12. The assessee had reflected total income of Nil in both the AYs after claiming deduction u/s 80IB being a manufacturing enterprise. The only addition made by the AO in both the AY 2010-11 & 2011-12 was disallowance of deduction claimed u/s 80IB on Exercise duty refund

by treating the same as revenue receipt and not as capital receipt as claimed by the assessee.

Against the said assessment orders, the assessee filed appeals before the Ld. CIT(A) who deleted the addition made on account of disallowance of deduction claimed u/s 80IB on Exercise duty refund by relying on the judgment of Hon'ble J&K High Court in case of M/s.Shree Balaji Alloys and Others (the judgment has since been upheld by the Hon'ble Supreme Court) in both AY 2010-11 & 2011-12 and restricted the deduction u/s 80IB to 10% on the net profits. This resulted in enhancement of the assessee's income to Rs.27,38,40,293/- for the AY 2010-11 and Rs.28,07,60,657/- for the AY 2011-12. Penalties u/s. 271(1)(c) were also imposed for the AY 2010-11 (Rs.8,46,14,650/-) and AY 2011-12 (Rs.8,67,55,040/-) based on the enhancement orders of the Ld. CIT(A).

On the issue of enhancement of income by the Ld. CIT(A), the assessee filed appeals before the Hon'ble ITAT for both AY 2010-11 & 2011& 12. The Hon'ble ITAT set aside the Ld. CIT(A) orders enhancing the assessee's income and restored the matter back to his file for adjudicating the issue afresh. Now the Ld. CIT (A) Jammu vide its orders no. CAJ/10198/19-20 (set aside) dated 24.09.2020 and CAJ/10199/19-20 (set aside) dated 24.09.2020 for AY 2010-11 and 2011-12 respectively has allowed the appeals of the assessee and thus demand has been reduced to Nil for both the A.Ys.

A.Y. 2012-13

The demand of Rs.65,65,920/- for the A.Y. 2012-2013 has been taken to +/- A/C while giving effect to the order no.152/ROT/IT/CIT(A)-1/LDH/2018-19 dated 11.03.2020. Thus on whole, at present no demand is outstanding against the assessee for the above mentioned A.Ys.

In the memo dated 01.12.2020 filed by the Learned Counsel for the First to Third Respondents, it has been stated as follows:-

" It is submitted that in the present case as per instruction from the Tax recovery office, Jammu there is no demand with respect to AY 2012-2013 and for the A.Y. 2010-2011 and 2011-2012 based on the orders in appeals the demand has been reduced to nil. The instructions are annexed along with this memo.

It is therefore prayed that this memo may be received on record along with the instruction and pass such further or other orders as this Hon'ble

Court may deem fit and proper in the facts and circumstances of the case and render justice."

The aforesaid submissions made are placed on record.

5. Having due regard to the subsequent events, inasmuch as the purpose for which the bank account of the Petitioner with the Fourth Respondent had been attached by the Third Respondent has ceased to exist, the impugned demand made by the Third Respondent to the Fourth Respondent is quashed.

Accordingly, the Writ Petition is disposed on the aforesaid terms. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Maya

To

1. The Deputy Commissioner of Income Tax
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Copy to
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+1cc to Mr.Hema Muralikrishnan, Advocate, S.R.No. 40041

W.P. No. 7550 of 2018

SR II(CO)
GN(21/12/2020)