IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBARAYON

W.P.No.5040 of 2020
and
W.M.P.No.5956 of 2020

Sporting Pastime India Ltd.,
Kasturi Buildings,
859 & 860, Anna Salai,
Chennai - 600 002,
Rep.by its Director, S.Padmanabhan ..Petitioner

Versus

1. The Assistant Registrar, Representing
   Income Tax Appellate Tribunal,
   A-3, 2nd Floor, Rajaji Bhavan,
   Besant Nagar, Chennai - 600 090.

2. The Income Tax Officer,
   Corporate Ward 6(4),
   121, M.G.Road,
   Chennai - 600 034. ..Respondents

Writ Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the record of the Petitioner relating to the impugned order passed by the 1st Respondent dated 10.02.2020 for the Assessment Year 2013-14, in SP.No.8/Chny/2020 in ITA.No.132/Chny/2020 in PAN:AAJCS2802C and quash the same and consequently, direct the 2nd respondent not to take any coercive steps to collect the outstanding demand for the Assessment years 2013-14.

For Petitioner : Mr.R.Vijayaraghavan

For Respondents : M/s.A.P.Srinivas
Senior Standing Counsel

JUDGMENT

[Order of the Court was made by T.S.SIVAGNANAM, J.]

This Writ Petition has been filed by a limited company, challenging the order passed by the Income Tax Appellate Tribunal ('the Tribunal' for brevity) dated 10.02.2020, rejecting the Stay Petition filed by the petitioner/assessee, praying for Stay of the Demand and not to initiate any coercive steps pursuant to the assessment order dated 28.12.2018 under Section 143(3) read with Section 254 of the Income Tax Act, 1961 ('the Act' for brevity)

2. Mr.R.Vijayaraghavan, learned counsel appearing for the petitioner/assessee, would vehemently contend that the Tribunal failed to appreciate the fact that as per the directions issued by the High Court of Delhi in its order dated 17.01.2013 in Company Petition No.292 of 2004 etc., as well as in the subsequent order dated 08.10.2018, the entire deposit amount together with the interest thereon belong to and had to be passed on to Canara Bank, New Delhi and hence no part of the money belonged to the petitioner/assessee. Further, it is contended that the petitioner/assessee had no right to receive either the Principal or the interest thereon in view of the orders passed passed by the High Court of Delhi. Further, without prejudice to the said contention, it is argued that the petitioner/assessee had to pass on the entire amount of the interest to Canara Bank, New Delhi, and the amount is a loss to the petitioner/assessee and hence, no taxable income accrues in the hands of the petitioner/assessee. Further, it is submitted that the Tribunal ought to have appreciated that what was passed on to Canara Bank, New Delhi, was the interest accrued on the monies, which belonged to them in the first place and therefore, the payment of the interest amount to Canara Bank cannot be considered as penalty for violation of law, but reduced from the interest income. Further, the Tribunal did not consider the balance of convenience, would require that the levy of tax and interest should be stayed because no income had accrued or reached the petitioner/assessee.

3. In the light of the above submission, the learned counsels would state that the Tribunal ought to have granted an interim order, more particularly, when the petitioner/assessee has paid a sum of Rs.87,00,000/- as against the demand of Rs.3.63 crores, which will be nearly 25% and the Tribunal should have considered the said facts and granted an interim order.

4. We have heard Mr.A.P.Srinivas, learned Senior Standing counsel for the respondent / Revenue on the above submission. On

perusal of the orders passed by the High Court of Delhi, more particularly, the order dated 17.01.2013, we find that there has been a long drawn litigation between the parties and the petitioner/assessee was also a party to the litigation. That apart, another order was passed by the High Court of Delhi on 08.10.2018. These orders were infact referred to in the earlier round of litigations between the parties and in the second round, after the Tribunal remanded the matter for fresh consideration, the matter was considered and the Assessing Officer had completed the assessment under Section 143(3) read with Section 254 of the Act by order dated 28.12.2018.

5. We find from the said order, there is a reference to the observations/directions issued by the High Court of Delhi. Since the assessment order was adverse to the interest of the petitioner, they filed appeal before the Commissioner of Income Tax Appeals – XV, Chennai. The Commissioner considered the matter and has dismissed the appeal by order dated 28.11.2019, where under also, the effect of the order of the High Court of Delhi has been dealt with. Since the appeal was dismissed, the assessee has filed the appeal before the Tribunal. As rightly noted by the Tribunal, this is a second round, where the claim made by the assessee has been disallowed and this factor can be very well taken into consideration, while deciding as to whether the petitioner/assessee has made out a prima facie case for grant of interim orders. Thus, when the assessee was unsuccessful before the lower forums for the second time, obviously this would be a factum, which would work against the assessee, while deciding a prima facie case. Infact, the Tribunal in the impugned order, has not foreclosed the assessee's / petitioner's case and it has made an observation that in the appeal, a detailed examination of the orders of the High Court of Delhi and other material has to be made and also, it is required to be examined, whether the interest payment was incurred for business purpose of the assessee or not.

6. Therefore, we find that there is no perversity or erroneous approach on the part of the Tribunal in not granting an interim order sought for by the assessee. When the Tribunal has failed to exercise its discretion in granting an interim order, the High Court while testing the correctness of the said order, would consider as to whether there was any perversity in the approach of the Tribunal for the High Court to interfere by substituting its opinion. To be noted that the present proceedings is not an appellate proceedings over and above the order passed by the Tribunal. Infact, the assessee has chosen to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. The limits to which this jurisdiction can be extended, especially in taxation matters, are well defined. Thus, in the absence of any

perversity in the impugned order, we are not inclined to interfere with the impugned order.

7. It is submitted by the learned counsel for the petitioner/assessee that the appeal itself has now been listed before the Tribunal and was last listed for hearing on 14.09.2020 and the matter has been adjourned to 08.12.2020 at the request of the Revenue. Since the petitioner/assessee appears to have been ready for the disposal of the appeal and the matter has been adjourned at the instance of the Revenue, We give liberty to the petitioner/assessee to move the Tribunal with a prayer for early hearing of the appeal and if such prayer is made, subject to the convenience of the Tribunal, the petitioner/assessee can be given a hearing at an earlier date. This is only an observation as it is the Tribunal, which has to finalize its Board depending on the pressure of the work.

8. With the above observations, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1. The Income Tax Appellate Tribunal,
'C' Bench, Chennai.

2. The Assistant Registrar, Representing
Income Tax Appellate Tribunal,
A-3, 2nd Floor, Rajaji Bhavan,
Besant Nagar, Chennai - 600 090.

3. The Income Tax Officer,
Corporate Ward 6(4),
121, M.G.Road,
Chennai - 600 034.

+1cc to Mr.Subbaraya Aiyar, Advocate in SR.NO..33407
+1cc to Mr.A.P.Srinivas, Advocate in SR.NO..33356

W.P.No.5040 of 2020

PP(CO)
RV(04/11/2020)