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.9782 of 2019
and
W.M.P.Nos.10384 & 10385 of 2019

Kalyanasundaram Suresh
Old No.12A, New No.24,
East Road, West CIT Nagar,
Nandanam,
Chennai - 600 035. ..Petitioner

Versus

1. The Deputy Commissioner of Income Tax,
   Non Corporate Circle 2,
   Room No.320, 3rd Floor, Wanaparthy Block,
   No.121, MG Road, Nungambakkam,
   Chennai - 600 034.

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

Writ Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the order in Stay Application No.33/CHNY/2019 dated 18/02/2019 passed by the Hon'ble Income Tax Appellate Tribunal, 'C' Bench, Chennai and quash the same as illegal, arbitrary and violative of principles of natural justice and further be please to direct the 2nd respondent to hear and decide the Stay Application No.33/CHNY/2019 of the petitioner on merits and pass such other or further orders as may deem fit and proper in the circumstances of this case and thus render justice.

For Petitioner : Mr.K.Ravi

For Respondents: M/s.HemaMuralikrishnan
Senior Standing counsel

ORDER

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

This writ petition has been filed by the assessee, praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to the order dated 18.02.2019 passed by the Income tax Appellate Tribunal ('the Tribunal' for brevity), 'C' Bench, Chennai, rejecting the Stay application filed by the petitioner / assessee on the ground that no prima facie case has been made out by the petitioner / assessee and no financial hardship was administered before the Tribunal.

2. When the writ petition was placed before us pursuant to the directions of the Hon'ble Chief Justice, the learned counsel appearing for the petitioner / assessee sought for interim protection as coercive action may be initiated by the Department to Recover the tax and penalty as quantified by the Assessing Officer in its order dated 14.03.2016 passed under Section 143 (3) of the Income Tax Act, 1961 ('the Act' for brevity). After considering the submissions made before us, we passed the following interim order on 11.06.2018:

> "We have heard Mr.K.Ravi, learned counsel for the petitioner and Mr.N.Senthil Kumar, learned Counsel for the first respondent.
>
> 2. This writ petition has been filed challenging the order passed by the Income Tax Appellate Tribunal 'C' Bench, Chennai. In the stay petition filed by the petitioner before the Commissioner of Income Tax (Appeals) - 2, Chennai, the Commissioner has dismissed the appeal vide an order dated 28.12.2018 in I.T.A.No.22/2016-17.
>
> 3. On rejection of the said order, it is seen that the learned counsel for the petitioner has circulated a letter of adjournment. However, the Tribunal has not inclined to adjourn the matter and dismissed the stay petition on the ground that no prima facie case is in favour of the assessee and no financial hardship is demonstrated before the Tribunal. We find from the stay petition that assessee has pointed out 9 reasons as to why he is seeking for stay and that there is a likelihood that all the major issues raised in the appeal will be decided in favour of the assessee.
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> 4. Furthermore, the assessee has pointed out that they have already paid 25% of the disputed demand and if further condition is imposed, it would not only be untenable but it will be unbearable hardship and pain to the assessee. The assessee also pleaded that serious and irreparable loss would be inflicted upon the assessee, if stay is not granted. We find that the Tribunal did not assign any substantial reasons and it

come to the conclusion that no prima facie case is made out by the petitioner.

5. In any event, we do not propose to go into the controversy, but we propose to stay all further proceedings pursuant to the order of assessment dated 14.03.2016 as confirmed by the Commissioner of Appeals in his order dated 28.12.2018 subject to the condition that petitioner/assessee pays a sum of Rs.8,00,000/- on or before 12 weeks from the date of receipt of copy of this order in one lump-sum or in installments within time frame fixed by this Court. In the event of default, the order of interim stay would stand automatically vacated. If the assessee complies with the above order, the Tribunal shall take up the case on merits and in accordance with law."

3. It is represented before us by the learned counsel for the petitioner / assessee that the condition imposed by this Court in the above mentioned order has been complied with.

4. We have heard Mr.K.Ravi, learned counsel appearing for the petitioner/assessee and M/s.Hema Muralikrishnan, learned Senior Standing Counsel for the respondents.

5. Taking into consideration the fact that even before the assessee had approached the Tribunal, the assessee had paid 25% of the disputed tax and as per the above orders, a further sum of Rs.8,00,000/- had already been remitted. Therefore, we are of the considered view that the interest of the revenue is sufficiently safeguarded and nothing more is required to be done and the order of stay, which was initially granted on 11.06.2019 should continue till the appeal is heard and disposed of by the Tribunal.

6. In the light of the above, the writ petition is allowed and the impugned order is set aside and in the light of the reasons assigned above, there shall be an order of interim stay of the demand raised by the Assessing Officer pursuant to the order of assessment dated 14.03.2016, till the appeal filed by the assessee before the Tribunal is heard and disposed of on merits and in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

2. The Deputy Commissioner of Income Tax,
   Non Corporate Circle 2,
   Room No.320, 3rd Floor, Wanaparthy Block,
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   Chennai - 600 034.

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

+1cc to M/s.Hema Muralikrishnan, Advocate in SR.NO..33321

W.P.No.9782 of 2019

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