

HIGH COURT AT CALCUTTA
(ORIGINAL SIDE)

APO/32/2021
WPO/184/2020
IA No. GA/1/2021
(Through Video Conferencing)

INDIA POWER CORPORATION LIMITED & ANR.

... Appellant(s)

Through : Mr. Ratnanko Banerji, Sr. Advocate (VC),
Ms. Aesa Dey, Advocate

VERSUS

PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA & ORS.

....Respondent(s)

Through : Mr. P. K. Bhowmick,

Coram : HON'BLE MR. JUSTICE RAJESH BINDAL, JUDGE

HON'BLE MR. JUSTICE ANIRUDDHA ROY, JUDGE

O R D E R

1. The present intra-court appeal has been filed against order dated January 27, 2021, passed by the learned Single Judge of this Court. The challenge in the writ petition was to the order dated March 5, 2020 passed by the Principal Commissioner of Income Tax – I disposing of the application for interim stay filed by the appellants during the pendency of the appeal. The order was challenged on the ground that no reasons have been assigned there.

2. While deciding the writ petition, the Learned Single Judge directed that the sum of ₹ 19 crore as directed by PCIT-I, Kolkata be deposited by the appellants and recovery of balance the amount shall remain stayed. The appeal

filed by the appellants is to be disposed of by CIT(A) on or before March 31, 2021.

3. While impugning the order passed by the Learned Single Judge, Mr. Banerji, learned senior counsel for the appellants, submitted that while directing payment of ₹ 19 crore, no reasons have been assigned. It is a case in which huge demand of ₹1776,85,38,547/- has been raised against the appellants in an illegal manner. It was a case where the appellants had purchased a loss making unit of M/s Meenakshi Energy Limited at a distress value of \$ 1 from ENGIE, a French company. M/s Meenakshi Energy Limited was a loss making unit. In support of the argument that any authority deciding rights of the parties is required to assign reasons therein, reliance was placed upon the judgements of the Supreme Court in *KRANTI ASSOCATES PRIVATE LIMITED AND ANOTHER v. MASOOD AHMED KHAN AND OTHERS* [(2010) 9 SCC 496] and *THE SECRETARY AND CURATOR, VITORIA MEMORIAL HALL v. HOWRAH GANATANTRIK NAGRIK SAMITY AND OTHERS* [(2010) 3 SCC 732].

4. He further submitted that the matter needs to be remanded to PCIT-I for consideration afresh for giving reasons for rejection of the said application filed by the appellants or in the alternate, in view of the controversy where huge demand has been made against the appellants in a totally illegal manner, where the value of shares of M/s Meenakshi Energy Limited had been added back in the income of the appellants, absolute stay may be granted and CIT (A) be directed to hear the appeal of the appellants.

5. On the other hand, learned counsel for the Revenue submitted that PCIT-I, Kolkata had already granted indulgence to the appellants by directing deposit of merely ₹ 19 crore out of total demand of ₹ 1776,85,38,547/-. It is

merely a provisional payment as the appeal has been directed to be heard up to March 31, 2021. In case the appellant succeeds, the amount will be refunded or adjusted against the tax liability of the appellants. He further referred to the judgement of the Supreme Court in *SILIGURI MUNICIPALITY AND OTHERS v. AMALENDU DAS AND OTHERS* [1984 (146) ITR 624] to submit that the Court should not grant interim stay where recovery of tax is involved. The power is to be exercised only in exceptional circumstances and the case in hand does not fall in that category.

6. In response, learned senior counsel for the appellants submitted that the facts of the instant case are exceptional where huge demand has been raised against the appellants in a totally illegal manner. Hence, the recovery ought to be stayed.

7. Heard the learned counsel for the parties and perused the paper book. The impugned order passed by the Learned Single Judge states that a sum of ₹ 19 crore directed by the PCIT-I be deposited by the appellants up to March 15, 2021 and the appeal be taken up by the CIT (A) for disposal by March 31, 2021. The Assessing Officer was restrained from recovering the balance demand beyond ₹ 19 crore. While framing assessment of the appellants a total demand of ₹ 1776,85,38,547/- was raised on account of the fact that the appellants had purchased a loss-making unit, namely, M/s Meenakshi Energy Limited from ENGIE, a French company, for \$ 1. As is evident from the facts stated in the assessment order, ENGIE had invested a sum of ₹ 3811,50,65,090/- in M/s Meenakshi Energy Limited towards the end of the financial year 2015-16 for purchase of its shares and the aforesaid shares were transferred by ENGIE in favour of the appellants in financial year 2017-18 for a nominal price of \$ 1. The

Assessing Officer, taking that into account this fact and others as stated in the order, levied tax on that.

8. We are not going into the merits of the controversy as the same is subject matter of consideration before the first appellate authority, namely, CIT (A). We find that the appellants had approached this Court in earlier round of litigation by filing WP No.54 of 2020, when their prayer for grant of stay was rejected. Earlier, in the order dated February 12, 2020, it has been noticed that the appellants were having a total income of about ₹ 30 crore. CIT (A) was directed to decide the stay application filed by the appellants within three weeks. It was subsequent thereto that the application of the appellants for stay was decided.

9. Considering the huge demands raised against the appellants and the fact noticed by Single Bench of this Court while passing the order dated February 12, 2020, regarding income of the appellant at ₹ 30 crore, direction by the PCIT – I for deposit of ₹ 19 crore cannot be said to be unreasonable.

10. The present appeal and the application are dismissed.

KOLKATA
4.3.2021
akg/ SK

(ANIRUDDHA ROY)
JUDGE

(RAJESH BINDAL)
JUDGE