R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO. 3367 OF 2019

Grasim Industries Ltd .. Petitioner
Versus
Deputy Commissioner of Income Tax,
Central Circle 1(4), Mumbai & Ors. .. Respondents

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- Mr. Jehangir D. Mistri, Senior Counsel a/w Mr. Madhur Agarwal, Mr. Fenil Bhatt and Mr. Atul K. Jasani for the Petitioner
- Mr. Anil C. Singh, Additional Solicitor General a/w Mr. Nikhil Waje & Mr. Akhileshwar Sharma for the Respondents

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CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.

DATE : JANUARY 20, 2021.

P.C.:

Heard Mr. Mistri, learned senior counsel for the petitioner and Mr. Singh, learned Additional Solicitor General of India for the respondents.

2. Challenge made in this writ petition is to the order dated 18.10.2019 passed by respondent No. 1 and the order dated 21.11.2019 passed by respondent No. 2 rejecting the application of the petitioner for complete stay of demand arising out of the order passed by the assessing officer under section 115Q read with section 115O of the Income Tax Act, 1961 for the assessment year 2017-18 till disposal of appeal before the Commissioner of Income Tax (Appeals) - 47 i.e respondent No. 3.

3. This Court on 12.12.2019 passed the following order:-

> " Heard learned counsel for the parties.
>
> 2. Place the petition on board on 3 January 2020 for final disposal. It is open for the Respondents to file their reply affidavit before the next date.
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> 3. We have considered the earlier orders passed on 14 August 2019 and 1 October 2019 in Writ Petition No.1405/2019 wherein ad-interim protection was granted to the Petitioner. By order dated 1 October 2019, it was directed that if the order on the application for stay filed by the Petitioner is adverse to the Petitioner, then no coercive proceedings would be adopted by the Revenue for a period of two weeks. It is upon the rejection of the application for stay, the present petition is filed.
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> 4. Considering the aforesaid order dated 1 October 2019 and that as we are placing the matter for final disposal on a short date i.e. on 3 January 2020 immediately upon reopening of the Court after Christmas Vacation, we are inclined to continue the protection granted by the order dated 1 October 2019.
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> 5. At this stage, learned counsel for the Respondents requests that instead of 3 January the matter may be adjourned to 10 January 2020. Accordingly, the petition to stand over to 10 January 2020. The protection granted by the Court by order dated 1 October 2019 in Writ Petition No.1405/2019 to continue till the next date."

4. Thus, from the above, we find that this Court had continued the interim protection granted by order dated 01.10.2019 in writ petition No. 1405/2019 filed by the petitioner. Therefore, order dated 01.10.2019 passed in writ petition No. 1405/2019 may be adverted to. Relevant portion of the order dated 01.10.2019 is extracted hereunder:-

> "5. We note that once it is held that an appeal under the Act is maintainable from the impugned order dated 14th March, 2010 passed by the Assessing Officer, then all incidence of an appeal would equally apply in the case of the Petitioner. It is also not disputed that once the Petitioner has filed an appeal before the CIT(A), it is open to the Petitioner to make appropriate application before the Authorities under Section 220 (6) of the Act, for stay of the demand till the final disposal of the appeal before the CIT(A). It would, therefore, be open to the Petitioner to take such measures as are available under the Act to obtain an appropriate order, seeking a stay of the recovery of the demand confirmed by an order dated 14th March, 2019. Looking at the huge demand and the attitude of the Revenue in curtailing the normal period of 30 days available to party to make a payment, it would be appropriate that till the disposal of the Petitioner's application under Section 220(6) of the Act and if the order on such application is adverse to the Petitioner, then for a period of two weeks thereafter, no coercive proceedings will be adopted by the Revenue. This, of course, subject to the Petitioner filing the necessary application within a period of two weeks from today."

5. Mr. Singh, learned Additional Solicitor General submits that the writ petition itself has become infructuous because respondent No. 3 has, in the meanwhile, disposed of the appeal filed by the petitioner whereafter petitioner has preferred further appeal before the Income Tax Appellate Tribunal, "G" Bench, Mumbai ("Tribunal" for short) being Income Tax Appeal No. 1935/Mum/2020. Since the subject matter of the writ petition pertains to stay of recovery of demand during pendency of appeal before respondent No. 3 and the said appeal have been disposed of by respondent

No. 3, no live issue survives for adjudication in this case. He also submits that a stay application was filed by the petitioner before the Tribunal which was disposed of vide order dated 18.12.2020 on the ground that the appeal was directed to be listed for hearing on 18.01.2021. Contention of Mr. Singh is that if the petitioner is aggrieved by such decision of Tribunal and seeks a fresh stay of demand, a new cause of action has arisen for which petitioner would have to file a fresh writ petition.

6. Mr. Mistri, learned senior counsel for the petitioner has referred to the order dated 18.12.2020 passed by the Tribunal and submits that though the Tribunal had fixed hearing of the appeal on 18.01.2021, no hearing took place on that day because of adjournment sought for by the revenue. Referring to paragraph 7 of the said order, he submits that Tribunal had noted the contradictory stand taken by the assessing officer. On the one hand, the assessing officer is bent on effecting recovery of the dues but on the other hand, he is saying that no coercive action would be taken in view of pendency of the writ petition and the stay granted therein. Therefore, the moment the writ petition is disposed of as infructuous, the assessing officer would immediately initiate recovery proceedings.

7. Mr. Singh has referred to paragraph 9 of the said order and submits that Tribunal had made it very clear that if the assessing officer resorts to any coercive measures, then the assessing officer should give at least one week's notice to the assessee.

8. After hearing learned counsel for the parties and on due consideration, we are of the view that since the Tribunal itself has decided to hear the appeal out of turn, the hearing should be expedited. Further, we feel that if the assessing officer initiates any recovery measure, he should give at least two weeks' prior notice to the petitioner to avail its legal remedy.

9. Considering the above, we issue the following directions:

(i) Let the Tribunal decide the appeal of the petitioner being Income Tax Appeal No. 1935/Mum/2020 within three months from today;

(ii) If the assessing officer resorts to any coercive measure for recovery of dues in the meanwhile, he shall give at least two weeks' prior notice to the petitioner to avail its legal remedy;

(iii) All contentions are kept open.

10. With the above directions, writ petition is disposed of.

[MILIND N. JADHAV, J.] **[UJJAL BHUYAN, J.]**

Ravindra M. Amberkar Digitally signed by Ravindra M. Amberkar Date: 2021.01.22 14:56:44 +0530