IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.15735 & 15736 of 2021
and
W.M.P.Nos.16637 & 16638 of 2021

Cholamandalam Investment and Finance
Company Limited,
Rep.by its Executive Vice President and Chief
Financial Officer,
Mr.D.Arul Selvan,
No.2, Dare House, NSC Bose Road,
Parrys, Chennai - 600 001. ...Petitioner in both W.Ps

Vs

1. Deputy Commissioner of Income Tax,
Corporate Circle 1 (1)
Shastri Bhawan, Haddows Road,
Chennai - 600 034.

2. Income Tax Officer,
(Addl.CIT/J.CIT/D.CIT/ACIT/ITO)
National e-Assessment Centre,
Room No.401, 2nd Floor, E-Ramp,
Jawaharlal Nehru Stadium,
New Delhi - 110 003. ...Respondents in both W.Ps

Prayer in W.P.No.15735 of 2021 : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Prohibition, prohibiting the Respondents from continuing with the assessment orders and connected proceedings pertaining to levy and recovery of double taxation in respect of income on account of “Excess Interest Spread” in pursuance of the assessment proceedings / assessment order(s) and demand notices or other consequential proceedings thereto, pertaining to the petitioner for AY 2014-15 to AY 2018-19.

Prayer in W.P.No.15736 of 2021 : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Mandamus, directing the respondents to provide relief/deduction for income on account of “Excess Interest Spread” already taxed on 'upfront/accrual basis' in a concerned assessment year by the respondents, while levying tax on 'receipt basis' on the same income in future assessment years as per the petitioner's return of income.

For Petitioner : Mr.P.S.Raman
Senior counsel
For Mr.Vishnu Mohan
[in both W.Ps]

For Respondent : M/s.Hema Muralikrishnan
Senior Standing counsel
For Income Tax
[in both W.Ps]

COMMON ORDER

W.P.No.15735 of 2021:

The Writ of Prohibition is filed to prohibit the respondents to continue with the assessment orders and connected proceedings pertaining to levy and recovery of double taxation in respect of income on account of “Excess Interest Spread” in pursuance of the assessment proceedings / assessment order(s) and demand notices or other consequential proceedings thereto, pertaining to the petitioner for AY 2014-15 to AY 2018-19.

2. The petitioner was incorporated in the year 1978 as the financial services arm of the Murugappa Group, in Chennai. The petitioner commenced business as an equipment financing company and is presently a comprehensive financial services provider offering vehicle finance, home loans, loan against property and SME loans to customers. The petitioner is registered as a Non-Banking Financial Corporation ('NBFC') with the Reserve Bank of India. The petitioner is assessed for Income Tax by the 1st respondent. The petitioner states that the present writ petition pertains to the assessment proceedings beginning from the Assessment Year AY 2012-13 up to 2018-19, wherein the respondents have acted in excess of their jurisdiction and have sought to levy and recovery double tax on the same transaction (s). The petitioner herein has been regularly filing its Return of Income under Section 139 of the Income Tax Act for the aforesaid assessment years.

3. The learned Senior counsel appearing on behalf of the petitioner mainly contended that all along the petitioners are agitating, regarding the double taxation made by the Department without any valid reason and in an unjust manner. In spite of that, the petitioners as a law abiding company, is punctually paying the tax and filing appeal against the assessment orders in order to contest the issues. Admittedly, the appeals are now

pending before the Income Tax Appellate Tribunal in respect of certain assessment years. In respect of other assessment years, the appeals are pending before the Commissioner, Income Tax (Appeals) and the appeals are also yet to be disposed of.

4. The last assessment order was passed on 20th April 2021 relating the Assessment Year 2018-19.

5. Considering the facts, this Court is of an opinion that the appeals are entertained and kept pending, which all are to be disposed of as expeditiously as possible with reference to the grounds raised by the writ petitioner in the present writ petition.

6. As far as the prayer relating to the Writ of Prohibition is concerned, any such negative relief, restraining the authorities, would result in non-operation of the Income Tax Act, which cannot be granted and in the event of granting any such Writ of Prohibition, the same will defeat the very purpose and object of the Act. Negative prayers, if any sought for, is to be dealt with cautiously by the Courts. Positive directions are to be issued, wherever required.

7. In the present case, the learned Senior counsel for the petitioner pointed out that appeals are pending before the Commissioner of Income Tax (Appeals) as well as before the Income Tax Appellate Tribunal. Thus, the petitioners are bound to pursue their remedy before the Appellate authority as well as before the Tribunal. Contrarily, if any such Writ of Prohibition, prohibiting the respondents from continuing with the assessment order is passed, the same would defeat not only the provisions of the Act, but it will defeat the purpose and object of the Tax law itself.

8. This being the principles to be followed with reference to the relief sought for in the present writ petition, the writ petitioner is at liberty to pursue their remedy before the Appellate authority as well as before the Tribunal as the case may be for effective adjudication of the disputes raised and the grounds raised in this writ petition also may be raised before the said authorities. The Appellate authority namely the Commissioner of Income Tax (Appeals) may ensure that the appeals filed by the petitioner are disposed of as expeditiously as possible.

9. With these observations, the writ petition in W.P.No.15735 of 2021 stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

W.P.No.15736 of 2021:

10. The relief sought for in the present writ petition is for a direction to direct the respondents to provide relief/deduction for income on account of “Excess Interest Spread” already taxed on 'upfront/accrual basis' in a concerned assessment year by the respondents, while levying tax on 'receipt basis' on the same income in future assessment years as per the petitioner's return of income.

11. In view of the orders passed in W.P.No.15735 of 2021, no further orders are required in this writ petition and accordingly, the writ petition in W.P.No.15736 of 2021 also stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Commissioner of Income Tax,
   Corporate Circle 1 (1)
   Shastri Bhawan, Haddows Road,
   Chennai – 600 034.

2. The Income Tax Officer,
   (Addl.CIT/J.CIT/D.CIT/ACIT/ITO)
   National e-Assessment Centre,
   Room No.401, 2nd Floor, E-Ramp,
   Jawaharlal Nehru Stadium,New Delhi – 110 003.

Copy To:

The Commissioner of Income Tax (Appeals)
121, Mahatma Gandhi Road, Chennai – 34.

+1cc to M/s.Hema Muralikrishnan, Advocate, S.R.No.36530

GPL(CO)
RGA(19/08/2021)