IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2022

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
AND
THE HONOURABLE MR. JUSTICE J. SATHYA NARAYANA PRASAD

W.A. No.139 of 2022
and
CMP.Nos.1038 and 1039 of 2022

Expovan
Represented by its Managing Partner, Mr.R.Mahendran
No.124/16, Vadakkipalayam Road
R.Ponnupuram
Pollachi - 642 002 .. Appellant/Petitioner

Versus

The Deputy Commissioner of Income Tax
Non Corporate Circle 4
No.63, Race Course Road
Coimbatore - 641 018 .. Respondent /Respondent

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 14.12.2021 passed in W.P. No. 26650 of 2021.

Prayer in WP.No.26650 of 2021: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the respondent contained in its Order dated 17.09.2021 bearing DIN & Letter No.ITBA/COM/F/17/2021-2022/1035676709(1) issued under Section 220(6) of the Income Tax Act, 1961 and all proceedings in furtherance thereof, and to quash the same as arbitrary, illegal and unjust, and to consequently forbear the respondent and/or any of its subordinates, agents, representatives or any other person claiming under/through the respondent from in any manner taking any steps towards the recovery of any demand made pursuant to the assessment order passed by the respondent bearing DIN:ITBA/AST/S/143(3)/2021-2022/1032276622(1) passed under Section 143(3) read with Section 143(3A) and 143(3B) of the Income Tax Act, 1961, dated 07.04.2021 for the Assessment Year 2018-2019 for PAN:AAFFE1545F pending disposal of the petitioner's appeal by the Commissioner of Income Tax (Appeals).

For Appellant : Mr. N.V. Balaji
For Respondent : Mr. A.N.R. Jayaprathap
Standing Counsel

JUDGMENT
(Judgment of the Court was delivered by R. MAHADEVAN, J.)

Challenging the order dated 14.12.2021 passed by the learned Judge in W.P.No.26650 of 2021, the petitioner / assessee has come up with this writ appeal.

2.At the outset, the relief sought in the writ petition is as follows:

"To issue a writ of Certiorarified Mandamus calling for the records of the respondent contained in its order dated 17.09.2021 bearing DIN & Letter No.ITBA/COM/F/17/2021-2022/1035676709 (1) issued under section 220(6) of the Income Tax Act, 1961 and all proceedings in furtherance thereof, and to quash the same as arbitrary, illegal and unjust and to consequently forbear the respondent and/or any of its subordinates, agents, representatives or any other person claiming under/through the respondent from in any manner taking any steps towards the recovery of any demand made pursuant to the assessment order passed by the respondent bearing DIN: ITBA/AST/S/143(3)/2021-2022/1032276622(1) passed under section 143(3) read with Section 143(3A) and 143(3B) of the Income Tax Act, 1961 dated 07.04.2021 for the assessment year 2018-19 for PAN: AAFFE1545F pending disposal of the petitioner's appeal by the Commissioner of Income Tax (Appeals).

3.The learned Judge, after considering the submissions made by the learned counsel appearing for both sides, disposed of the writ petition in the following manner:

> "6. Considering the same, I am inclined to dispose this writ petition by directing the petitioner to pay a sum of Rs.30,00,000/- per month till the amount is paid. The amounts shall be paid by the petitioner by 5th of every month. In case there is failure to pay the amounts by the due date, the protection under this order shall come to an end sine die and the respondent will be at liberty to attach the bank accounts of the petitioner. In other words, the impugned Assessment order shall stand revived without any reference.
>
> 7. The appeal of the petitioner which is pending before the Commissioner of Income Tax

(Appeals) shall be taken up for a final hearing only after the petitioner pays the entire amount of Rs.2,98,81,885/- in terms of this order.

8. It is needless to state that the payments to be paid by the petitioner is without prejudice to the rights of the petitioner in the appeal pending before the Commissioner of Income Tax (Appeals). The first instalment shall be paid by the petitioner by 05.01.2022.

9. This Writ Petition stands disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed."

4.It is the contentions of the learned counsel for the appellant that the respondent passed the assessment order dated 07.04.2021 under section 143(3) r/w 143(3A) & 143(3B) of the Income Tax Act, making addition of Rs.13.67 crores twice, resulting in very huge demand on the appellant; further, the assessment order is in violation of section 144B of the Act; and hence, the same is void and non-est in law. The learned counsel further submitted that when the assessment order suffers from patent illegality and is liable to be quashed, the question of pre-deposit by the assessee, does not arise. However, by order dated 17.09.2021, the request of the appellant to stay the demand, was rejected by the Appellate Authority. Notwithstanding the same, the appellant in order to prove its bona fide, had already paid Rs.25,00,000/ along with a letter dated 02.12.2021 to the Assistant Commissioner of Income Tax, Coimbatore, with an undertaking to pay a sum of Rs.10,00,000/- every month till the disposal of the appeal or the time required to pay 20% of the disputed demand, which request was not considered. The learned Judge also, without considering the plight of the appellant, directed them to pay a huge sum of Rs.30,00,000/- every month until the amount of Rs.2,98,81,885/- being 20% of the disputed demand, is paid. Thus, the learned counsel submitted that the order of the learned Judge would put the appellant in huge financial trouble and thereby affect the cash flow and livelihood of the entire cluster of farms, whose livelihood depend on the appellant and hence, the same has to be set aside.

5.Heard the learned standing counsel appearing for the respondent, who submitted that the order of the learned Judge does not require any interference at the hands of this court, as the same was passed, after taking into account all the facts and circumstances of the case.

6.This court has also perused the documents enclosed in the typed set of papers.

7.What was challenged in the writ petition is to the order passed by the Deputy Commissioner of Income Tax, Coimbatore, under section 220(6) of the Income Tax Act, 1961, rejecting the petition for stay of demand filed by the appellant /assessee for the assessment year 2018-19 and directing to pay at least Rs.2,98,81,885/- being 20% of the total demand amounting to Rs.14,94,09,424/- within 15 days from the date of receipt of the order to consider for stay of collection of remaining demand. Taking note of the plea of the appellant, the learned Judge granted interim protection with respect to attachment of the bank accounts of the appellant, subject to the condition that the appellant shall pay Rs.30,00,000/- per month till the amount is paid and the first instalment and the first instalment shall commence on 05.01.2022; and only after the appellant pays the entire amount, the appeal shall be taken up for final hearing. Being dissatisfied with the order so passed in the writ petition, the appellant is before this court.

8.It is not in dispute that once the court finds the assessment order to be illegal and decides to set aside the same, there cannot be imposition of any condition; and the levy and collection of tax must be under the four corners of law. Whereas, in this case at hand, the appellant challenged the assessment order by filing an appeal before the Appellate Authority. Pending the same, they sought an order of stay, which was rejected for want of deposit of 20% of the disputed tax. Therefore, it is apparent that the assessment order passed by the respondent is neither quashed nor stayed by the Appellate Authority.

9.By the order impugned herein, considering the grievances of the appellant, the learned Judge, while granting interim protection, has shown some indulgence by directing them to pay 20% of the demand raised, by way of installment, which in the opinion of this court, seems to be reasonable and warrants no interference.

10.However, having regard to the bona fide contentions raised on the side of the appellant that the livelihood of about 3200 families of the farmers depends on the functioning of the company and the payment of huge sum on every month would severely affect the working capital of the appellant; and the appellant has already made payment of Rs.25,00,000/- and is prepared to pay Rs.10,00,000/- per month till 20% of the disputed demand is made, this court is inclined to modify the order impugned herein to the effect that "the petitioner shall pay a sum of Rs.15,00,000/- per month, instead of Rs.30,00,000/- per month till the entire amount of Rs.2,98,81,885/- is paid and the same shall be paid by the petitioner by 5th of every month, with effect from 05.03.2022". Except the same, the order of the learned Judge dated 14.12.2021 passed in WP.No.26650 of 2021 remains unaltered.

11.With the aforesaid modification, this writ appeal stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

Dhk

To

1.The Deputy Commissioner of Income Tax
Non Corporate Circle 4
No.63, Race Course Road
Coimbatore - 641 018

+1cc to Mr.N.V.Balaji, Advocate SR.No.8728
+1cc to Mr.AP.Srinivas, Senior Standing Counsel (IT), Advocate SR.No.8383

W.A. No.139 of 2022

SSD(CO)
GN(24/02/2022)