IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.1360 OF 2022
AND
W.M.P.NO.1475 OF 2022
(Through Video Conferencing)

Cognizant Technology Solutions India Private Limited,
No.165, Menon Eternity Building,
6th Floor, St.Mary's Road,
Chennai - 600 018. ...Petitioner

Vs

1. The Commissioner of Income Tax (Appeals)-18,
3rd Floor, Investigation Building,
No.46, (Old No.108), Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034.

2. The Assistant Commissioner of Income Tax,
Circle-1, Large Tax Payer Unit,
7th Floor, Wanaparthy Block,
Aayakar Bhawan,
Nungambakkam,
Chennai - 600 034.

3. The Assistant Commissioner of Income Tax,
Central Circle 1(1),
3rd Floor, Investigation Building,
46, (Old No.108), Mahtma Gandhi Road,
Nungambakkam,
Chennai - 600 034.

4. The Principal Commissioner of Income Tax,
Centre Circle-1,
3rd Floor, Investigation Building,
46, (Old No.108), Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarifid Mandamus, forbearing the respondents, their agents or subordinates, from enforcing or giving effect the order bearing No.ITBA/COM/F/17/2020-2021/1026999296(1) dated 29th April 2020 issued by the second respondent until the disposal of the Appeal No.ITA.No.CIT(A), Chennai-17/10011/2020-2021 on the file of the first respondent, and for a period of 30 days thereafter, and also direct the fourth respondent to release its lien on all the fixed deposits.

For Petitioner : Mr.Ajoy Vohra
Senior Counsel
for Mr.Srinath Sridevan

For Respondent : Mr.A.P.Srinivas
Senior Standing Counsel

ORDER

This Writ Petition has been filed for the issuance of a Writ of Mandamus, forbearing the Respondents, their agents or subordinates, from enforcing or giving effect the order bearing No.ITBA/COM/F/17/2020-2021/1026999296(1) dated 29th April 2020 issued by the second respondent until the disposal of the Appeal No.ITA.No.CIT(A), Chennai-17/10011/2020-2021 on the file of the first respondent, and for a period of 30 days thereafter, and also direct the fourth respondent to release its lien on all the fixed deposits in the Schedule below.

2. The Petitioner had been issued with an order under Section 115 (O) of the Income Tax Act, 1961 on 22.03.2018 in respect of certain transactions arising out of buy-back and payment of amounts to the persons from the shares were purchased. Pursuant to the directions from this Court in order dated 18.04.2015 under Sections 391 & 392 of the Companies Act, 1956.

3. It is the specific case of the petitioner that while making payments for the buy back of the shares the petitioner had also deducted tax and remitted the same to the credit of the Income Tax Department. The Department however took a stand that the amount was paid by the petitioner was liable to pay tax under Section 115 (O) of the Income Tax Act, 1961 and thus issued notice dated 23.03.2018 which was the subject matter of the proceedings before the High Court in W.P.No.7354 of 2018.

4. In the aforesaid writ petition an interim order came to be passed and later a final order. The matter travelled upto the Division Bench which affirmed the order of the Learned Single Judge vide order daed 06.09.2019 in W.A.No.2063 of 2019. Aggrieved by the same, the petitioner had preferred S.L.P.No.1992 of 2020.

5. The Hon'ble Supreme Court by its order dated 04.03.2020, in which relevant paragraph No.18 is as follows:-

> "18. In the peculiar facts and circumstances of the present case, while disposing of this Appeal, we direct:-
>
> (a). The Communication dated 22.03.2018 shall be treated as a show cause notice calling upon the appellant to respond with regard to the aspects adverted in the said communication;
>
> (b). The appellant shall be entitled to put in its reply and place such material, on which it seeks to place reliance within 10 days from today;
>
> (c). The appellant shall thereafter be afforded oral hearing in the matter;
>
> (d).The matter shall thereafter be decided on merits by the concerned authority within two months from today;
>
> (e).Pending such consideration, as also till the period to prefer an appeal from the decision on merits is not over, the interim order passed by the Single Judge of the High Court on 03.04.2018 and as affirmed by this Court vide its order dated 14.10.2019, shall continue to be in operation; and
>
> (f).The amount of Rs.495,24,73,287/- deposited towards payment of tax and the amount of Rs.2806,40,15,294/- which stands deposited and invested in the form of Fixed Deposit Receipts shall be subjected to the decision to be taken by the concerned Authority on merits or to such directions as may be issued by the Appellate Authority"

6.The learned Senior Counsel for the petitioner submits that pursuant to the aforesaid directions of the Hon'ble Supreme Court ordre, the petitioner had also sent a representation dated 13.03.2020, which eventually confirmed the demand vide order dated 29.04.2020.

7.The learned Senior Counsel for the petitioner had also filed an appeal before the first respondent CIT Appeals on 23.06.2021 and that the said appeal heard on 27.01.2022.

8.The learned senior counsel submits that although the petitioner has deposited the amounts mentioned above, the continuance of lien over the bank account deposit and the bank guarantee furnished cannot be countenanced in the light of the circular of CBDT issued for the purpose of Section 220 (6) of the Income Tax Act, 1961 vide Ciruclar & Instruction No.1914 dated 20.02.1993.

9.The learned senior counsel further submits that the Hon'ble Supreme Court has also passed an order in LG ELECTRONIC INDIA PVT. LTD. Vs. CIT 2018 8 SCC 447 and has clarified that in all similar cases it deposit of an amount lesser than 20 per cent can be entertained pending appeal in the facts of each case.

10.The learned senior counsel for the petitioner further submits that the amount is lying un-utilized and is un-productive for a period of over four years since 2018. It is submitted that even if in a worst case scenario, pending appeal a maximum 20 per cent can be insisted not more, whereas in this case more than 15 per cent of the amount stands deposited pursuant to the order of the Learned Single Judge of this Court and that if the amount which lying on the deposit over which lien is being exercised and considered, the amount would exceed more than 20 per cent.

11.The learned Senior Counsel for the petitioner submits that the petitioner has already a sum of Rs.495,24,73,287 crores pursuant to the interim direction of the Learned Single Judge of this Court and a sum of Rs.8,98,01,63,318/- as withholding tax and then the TDS and the respondents are exercising the lein of Rs.29,56,84,89,997/- (Principle of Rs.2806,40,15,294/-) cannot be countenanced.

12.The learned Senior Counsel submits that even if adverse orders are passed, the petitioner is entitled to take the issue further appeal before the Appellate Tribunal, therefore, under no circumstances the amount can exceed 20 per cent.

13.Today when the case was taken up for hearing, the learned Senior Standing Counsel for the respondents submits that the petitioner's appeal before the Commissioner of Income Tax (Appeals) will be finally taken up for hearing on 07.02.2022 and orders will be passed by the Appellate Commissioner within a period of fifteen days from the date of receipt of copy of this order.

14.The above submissions of the learned senior standing counsel for the respondents stand recorded.

15. In view of the above, this writ petition is disposed by directing the respondents not to encash the bank guarantee or

the amounts lying in deposit pursuant to order of this Court pending further orders by the CIT Appeals. In case, adverse orders are passed and appeal is filed by the petitioner within the time stipulated under the provisions of the Income Tax Act, 1961 total recovery cannot exceed 20% in terms of circular issued under Section 220 (6) of the Income Tax Act, 1961 and excess lying as security shall be refunded back to the petitioner. No costs. Consequently, connected writ miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

nst/rgm

To:

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+1cc to M/s.Srinath Sridevan, Advocate, S.R.No.6110
+1cc to M/s.A.P.Srinivas, Advocate, S.R.No.6105

W.P.No.1360 of 2022
and W.M.P.No.1475 of 2022

SSN(CO)
RGA(21/02/2022)