IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 25.02.2022

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.3946 of 2022
and W.M.P.No.4090 of 2022

George Maijo Industries Private Limited
Represented by its Managing Director
Mr.Joseph Maijo
2B, Apex Plaza, 5, Nungambakkam High Road,
Chennai - 600 034. ... Petitioner

Vs.

The Income Tax Officer
Corporate Ward 2(3), Chennai
Wanapathy Block,
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034. ... Respondents

Prayer: Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Mandamus, to raise the attachments made by the respondent on the bank accounts of the petitioner through notice u/s. 226(3) dated 27.01.2022 having DIN & Notice No. ITBA / COM / F / 1 / 2021-22 / 1039113078(1), ITBA / COM / F / 17 / 2021-22 / 1039123958(1), ITBA / COM / F / 17 / 2021-22 / 1039124820(1), ITBA / COM / F / 17 / 2021-22 / 1039113357(1), ITBA / COM / F / 17 / 2021-22 / 1039113756(1), ITBA / COM / F / 17 / 2021-22 / 1039113981(1), ITBA / COM / F / 17 / 2021-22 / 1039116556(1), ITBA / COM / F / 17 / 2021-22 / 1039116327(1), ITBA / COM / F / 17 / 2021-22 / 1039114445(1), ITBA / COM / F / 17 / 2021-22 / 1039115421(1), ITBA / COM / F / 17 / 2021-22 / 1039117164(1), ITBA / COM / F / 17 / 2021-22 / 1039116790 (1) and Notices u/s. 226 (3), dated 28.01.2022 having DIN & Notice No.ITBA / COM / F / 17 / 2021-22 / 1039150168(1), ITBA / COM / F / 17 / 2021-22 / 1039149836 (1) and direct the respondent to give opportunity to the petitioner before proceeding with the recovery proceeding.

For Petitioner : Mr.Ravi Kannan

For Respondent : Mrs.Hema Muralikrishna
Senior Standing Counsel

ORDER

The prayer sought for herein is for a writ of mandamus, to raise the attachments made by the respondent on the bank accounts of the petitioner through notice u/s. 226(3) dated 27.01.2022 having DIN & Notice No. ITBA / COM / F / 1 / 2021-22 / 1039113078(1), ITBA / COM / F / 17 / 2021-22 / 1039123958 (1), ITBA / COM / F / 17 / 2021-22 / 1039124820(1), ITBA / COM / F / 17 / 2021-22 / 1039113357(1), ITBA / COM / F / 17 / 2021-22 / 1039113756(1), ITBA / COM / F / 17 / 2021-22 / 1039113981 (1), ITBA / COM / F / 17 / 2021-22 / 1039116556(1), ITBA / COM / F / 17 / 2021-22 / 1039116327(1), ITBA / COM / F / 17 / 2021-22 / 1039114445(1), ITBA / COM / F / 17 / 2021-22 / 1039115421 (1), ITBA / COM / F / 17 / 2021-22 / 1039117164(1), ITBA / COM / F / 17 / 2021-22 / 1039116790 (1) and Notices u/s. 226 (3), dated 28.01.2022 having DIN & Notice No.ITBA / COM / F / 17 / 2021-22 / 1039150168(1), ITBA / COM / F / 17 / 2021-22 / 1039149836 (1) and direct the respondent to give opportunity to the petitioner before proceeding with the recovery proceeding.

2. In respect of Assessment Years 2012-13, 2015-16, 2016-17, 2017-18, assessment orders have been passed against the petitioner assessee. Insofar as the Assessment Years 2012-13, 2015-16 and 2016-17 are concerned, though Appeal filed before the Commissioner of Income Tax (Appeals) [in short "CIT (Appeals)"], the order have been confirmed, as against which, the petitioner assessee filed further appeal before the ITAT, where those appeals are still pending.

3. Insofar as the Assessment Year 2017-18 is concerned, as against the assessment order, appeal was filed before the CIT (Appeals), which is pending before the said authority.

4. In the meanwhile, several Bank accounts of the petitioner had been attached, by which, according to the petitioner, the entire business and other activities of the petitioner have been completely crippled.

5. Therefore in order to get a solace to the grim situation, according to the petitioner, he has already moved a stay application of the demand in respect of the Assessment Year 2012-13 before the ITAT, where, having considered the same, it was rejected by the ITAT.

6. Insofar as the other Assessment Years, i.e., 2015-16, 2016-17 as well as 2017-18 are concerned, no such stay petition had been filed either before the CIT (Appeals) or before the ITAT.

7. Under these circumstances, the petitioner has moved the present writ petition with the aforesaid prayer, where, Mr.Ravi Kannan, learned counsel appearing for the petitioner assessee

has made a fervent appeal before this Court stating that, the petitioner is ready and willing to make some payment of the demand, which may be indicated by this Court till the petitioner approaches the ITAT in respect of AY 2015-16 and 2016-17 and CIT (Appeals) in respect of 2017-18 to file appropriate stay application and if such applications are filed, that may also be directed to be considered on merits by taking into account the amount paid by the petitioner, pursuant to the direction to be given by this Court at this juncture in this writ petition as a condition precedent for the grant of stay of the demand.

8. Insofar as the AY 2012-13 is concerned, since the very stay petition filed before the ITAT itself was dismissed, the petitioner had no option except to file Tax Case Appeal before this Court, where also the same interim arrangement can be made till the petitioner approaches this Court by filing the Tax Case Appeal.

9. In response to the said submissions made by the learned counsel appearing for the petitioner, Mrs.Hema Murali Krishnan, learned Senior Panel Counsel appearing for the respondent would submit that, in respect of the AY 2012-13 is concerned, the very stay petition filed by the petitioner, having been considered and dismissed by the ITAT, against which, so far no appeal was filed. Like that, in respect of AY 2015-16 and 2016-17 also, though appeal has been filed before ITAT, where admittedly, so far no stay petition had been filed by the petitioner assessee.

10. She would also submit that, in respect of AY 2017-18 is concerned, appeal is pending before the CIT (Appeals), before whom also, no stay petition had been filed and in that case, even a stay petition could have been filed before the Assessing Authority invoking Section 220 (6) of the Income Tax Act.

11. Therefore, the learned Standing counsel would submit that, insofar as the present plea made by the petitioner to lift the attachment made in respect of the Bank Account is concerned, unless and until the petitioner make some substantial payment of the demand in respect of each Assessment Year, the plea raised by the petitioner to lift the attachmentof the Bank Account cannot be considered by the Revenue, hence, the present plea made by the petitioner is without any merit and hence, she seeks for dismissal of this writ petition.

12. I have considered the said submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

13. Admittedly the petitioner suffered with order of assessment as well as the order of first Appellate Authority atleast in respect of three Assessment Years. For AY 2017-18 is concerned, the appeal is pending before the CIT (Appeals).

14. Except AY 2012-13, where they unsuccessfully filed the stay petition, for all other Assessment Years, even that attempt has not been made by the petitioner assessee. Now he has come forward before this Court making a hue and cry against the attachment made in respect of the Bank Accounts of the petitioner with further rider that, the petitioner is ready and willing to make some payment, that is some percentage of demand which may be indicated or stipulated by this Court as a condition precedent for the consideration of grant of stay of the demand, for the time being, enabling the petitioner assessee to approach the appropriate forum namely, ITAT, CIT (Appeals) and Assessing Authority, as the case may be seeking for a stay of the demand in respect of the concerned Assessment Year.

15. In normal course, if an appeal is filed, which is pending, it is open to the assessee to make an application for stay, even before the Assessing Authority, as there is no condition precedent as a prior deposit for entertaining the appeal before the Appellate Authority and in such case, the Assessing Authority can use his discretion, of course by imposing certain conditions, can treat the assessee is not liable to to pay the tax for the present, that means a stay can be granted.

16. However, the said stay cannot be granted by way of blanket stay, as the provision namely, Section 220 (6) of the Act makes it mandatory that a condition shall be imposed, of course from the discretion of the Assessing Authority.

17. The petitioner has missed to file any such application in respect of three Assessment Years, i.e., 2012-13, 2015-16 and 2016-17. In all these years, the Appeal is now pending before the ITAT.

18. Out of these three Assessment Years, for AY 2012-13, as stated above, the petitioner has made an unsuccessful attempt to seek for stay. Even against the said order passed by ITAT no further appeal was filed by way of Tax Case Appeal before this Court.

19. When that being the situation, the assessee now come forward to make payment, which can be taken as a condition for making some interim arrangement, till the petitioner approaches the appropriate forum, to seek for stay of the demand by filing

necessary application.

20. Taking into account of these totality of the factual matrix of this case and having regard to the submissions made by the learned counsel for the petitioner as well as the respondent Revenue, this Court is inclined to dispose of this writ petition with the following orders :

(i) That the petitioner shall make payment of 20% of the demand in respect of AY 2015-16, 2016-17 and 2017-18 and 30% of the demand for AY 2012-13, within a period of four weeks from today.

(ii) On such condition, there shall be an order of stay for a period of two months, within which, the petitioner shall approach either the ITAT or the CIT (Appeals) or the Assessing Authority as the case may be in respect of AY 2015-16 to 2017-18.

(iii) Insofar as AY 2012-13 is concerned, such a course of action can be adopted by the petitioner assessee against the order passed by the ITAT in his earlier application for stay by filing appropriate appeal before the forum concerned, in accordance with law.

(iv) In view of the stay granted, after making the payment, as indicated above, the attachment made in respect of the Bank Accounts can be lifted by the respondent Revenue.

(v) It is made clear that, if the petitioner assessee has not complied with the payment schedule as indicated above, the stay granted now through this order shall stand automatically vacated without further reference to this Court for any further orders.

(vi) It is further made clear that, after complying the aforesaid, if the petitioner approaches the concerned forum, i.e., ITAT, CIT (Appeals) as well as the Assessing Authority as the case may be and stay applications are made, the same shall be considered objectively by taking into account that the conditional order passed by this

Court is complied with by the petitioner and based on which the stay petition shall be decided accordingly.

(vii) The effect of non-compliance of this order as indicated above, in any respect, either payment or approaching the concerned authorities as indicated above by filing stay petition, would entile the Revenue to proceed further, as if that the petitioner assessee has become a defaultor in making the payment in respect of demand for four Assessment Years."

21. With these directions and observations, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-CCC)

//True copy//

Sub Assistant Registrar

tsvn

To

The Income Tax Officer
Corporate Ward 2(3), Chennai
Wanapathy Block,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

+1cc to Mrs.Hema Muralikrishna, Advocate SR.No.12910

+1cc to Mr.Ravi Kannan, Advocate SR.No.12879

W.P.No.3946 of 2022

MG(CO)
GMY(17/03/2022)