IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.NO.4445 OF 2022
AND
W.M.P.NOS.4582, 4583 & 4584 OF 2022

M/s.Aarish Solar Power Private Limited,
Flat No.6J, Century Plaza, 560-562,
Anna Salai, Teynampet, Chennai,
Tamil Nadu – 600 018,
Rep. By its Authorized Signatory ... Petitioner

.Vs.

1. The Union of India,
Represented by its Secretary,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi – 110 001.

2. The Principal Commissioner of Income Tax,
PCIT, Chennai -1, Room No.401,
Wanaparthy, Block-4th Floor,
Chennai – Wanaparthy Block,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai,
Tamil Nadu - 600 034.

3. The Deputy Commissioner of Income Tax,
Corporate Circle 1(1),
CHE, Room No.611,
Wanarpathy Block – VI Floor,
Chennai - Wanarparthy Block,
No.121 Mahatma Gandhi Road,
Nungambakkam, Chennai,
Tamil Nadu – 600 034.

4. The Additional/Joint/Deputy/Assistant
Commissioner of Income Tax/Income Tax Officer,
National e-assessment Centre,
Delhi. ... Respondents

PRAYER:-

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari calling for the records of the 3rd respondent in its order dated 10/02/2022 in Reference ITBA/COM/F/ 17/2021-22/1039584639(1), quash the same.

For Petitioner : Mr.Abishek Jenasenan

For Respondents : Mr.D.Prabhu Mukunth Arunkumar
Junior Standing Counsel

ORDER

The prayer sought for herein is for a writ of calling for the records of the 3rd respondent in its order dated 10/02/2022 in Reference ITBA/ COM/F/17/2021-22/1039584639(1), quash the same.

2. In respect of assessment year 2017-18, an assessment order has been passed against the petitioner assessee under the Income Tax Act, 1961 (in short 'the Act'). As against the assessment order, the petitioner filed an appeal before the Commissioner (Appeal), where, the appeal is still pending. On 13.12.2021, the assessee filed a revision before the 2nd respondent/Principal Commissioner of Income Tax and that revision petition also was rejected by the 2nd respondent. In the meanwhile, during the pendency of the appeal, the petitioner assessee has filed stay petition under Section 220(6) of the Act seeking stay of the assessment order. The said application for stay was considered and rejected through the order dated 10.02.2022. Aggrieved over the same, the present writ petition has been filed.

3. Mr.Abishek Jenasenan, learned counsel appearing for the petitioner would submit that, since it is high pitch claim of more than Rs.13 Crores, the usual oder for rejecting the revision petition of the assessee by the 2nd respondent by imposing the condition that CBDT instruction No.1914 by paying 20% of the demand shall be paid immediately may not hold good, therefore, on that ground, the said order is challenged.

4. The learned counsel for the petitioner would also submit that, if any lesser percentage of amount is directed to be paid, that would be in the interest of the petitioner, because, already the Bank account of the petitioner have been attached. Therefore, the whole business of the petitioner since has been crippled, is not in a position to pay even a lesser amount of

the demand. Therefore, the order impugned may be set aside and the matter may be remanded back to the 2nd respondent for reconsideration.

5. However, Mr.D.Prabhu Mukunth Arunkumar, learned Junior Standing Counsel appearing for the respondent would submit that, the very lesser percentage of conditional order is nothing but 20% which has already been imposed by the Assessing Authority while disposing the stay petition filed by the petitioner under Section 220(6) of the Act.

6. There was no special reason attached with this case before the 2nd respondent while revision is filed, therefore, the said order having been confirmed, the same direction was given by the Revisional Authority also directing the petitioner assessee to pay 20% of the demand. Therefore, absolutely there is no reason to interfere in the said order and if at all the petitioner come forward to make the payment of 20%, certainly, the Bank account already attached against the petitioner would be considered for lifting the same. Hence, the learned Standing Counsel would submit that, there is absolutely no merit in this case, hence, it is liable to be rejected, he contended.

7. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

8. Insofar as the discretion attached with the Assessing Officer while disposing an application filed under Section 220 (6) of the Act, the Act itself says that any condition can be imposed at the discretion of the Assessing Authority.

9. In this context, the CBDT instruction No.1914 directing the assessee to pay 20% is uniformly imposed almost for such all cases like the present one.

10. Only certain circumstances have been enumerated in CBDT instruction No.1914 only under which circumstances, the 20% conditional order may be considered for lesser amount or even without any amount such kind of orders could be passed but the case of the petitioner, according to the Revenue, may not be in any such circumstances. Therefore, the CBDT instruction No.1914 is to be complied with, according to the respondent Revenue, therefore, they directed the assessee to pay 20% of the demand.

11. Insofar as the said stand taken by the Revenue is concerned, no doubt, in normal circumstances, uniformly this 20% is made as a condition to grant stay of the demand.

12. However, in some cases depending upon the circumstances, especially in high pitch cases, lesser percentage of conditional amount can be directed to be complied with by the assessee, in some cases this Court have shown its indulgence to reduce the 20% of the conditional payment in to 15% and in the present case also since the demand is more than Rs.13 Crores, it is one of the high pitch claim. Therefore, instead of issuing the usual condition of 20% of the demand to be paid as a condition precedent for grant of stay, this Court feels that, the said 20% may be modified into 15% and if that 15% of the demand is paid by the petitioner within a time frame to be stipulated by this Court, the Bank attachment made against the petitioner's account can be considered by the Revenue for lifting the same.

13. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

(i) That the impugned order is partly modified by giving the following direction that the petitioner assessee on payment of 15% of the demand, i.e., out of Rs.13,46,69,930/- within a period of four weeks from the date of receipt of a copy of this order, the assessment order for 2017-18 which is the subject matter before the Appellate Authority is stayed.

(ii) Once such amount of 15% as directed above, is paid by the petitioner assessee immediately the Bank account which has already been attached by the orders of the Revenue can be lifted.

(iii) It is further made clear that, within the time stipulated, if the 15% of the demand as a conditional order, is not made by the petitioner assessee, no further indulgence can be shown by the Revenue either for granting a stay or for lifting of the attachment made against the petitioner.

14. With these observations, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Sgl

To

1. The Secretary, Union of India,
Department of Revenue,
Ministry of Finance,
North Block, Delhi – 110 001.

2. The Principal Commissioner of Income Tax,
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Commissioner of Income Tax/Income Tax Officer,
National e-assessment Centre,
Delhi.

+2ccs to Mr.Abishek Jenasenan, Advocate, S.R.No.22611
+1cc to Mr.Hema Muralikrishnan, Advocate, S.R.No.22505

W.P.NO.4445 OF 2022

SSN(CO)
PBS/23/05/2022