IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2022

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.4447 of 2022
and
W.M.P.Nos.4585 & 4586 of 2022

M/s.Intimate Fashions (India) Pvt.Ltd.,
517-519, Thirupporur Kottamedu High Road,
Nandhivaram Village, Guduvancheri,
Chennai - 603 202. ... Petitioner

Vs

1. The Deputy Commissioner of Income Tax,
   Corporate Circle-1(1),
   121, Mahatma Gandhi Road,
   Nungambakkam, Chennai - 600 034.

2. The Income Tax Officer,
   National Faceless Assessment Centre,
   New Delhi.

3. The Commissioner of Income Tax (Appeals)
   National Faceless Appeal Centre,
   New Delhi. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of 1st Respondent and to quash the order bearing DIN No.ITBA/COM/F/17/2021 - 22/1039384331 (1) dated 04.02.2022 and to quash the same and consequently, direct the 1st Respondent to grant a stay of the demand, made pursuant to Assessment Order bearing No.ITBA/AST/S/143(3)/2021 - 22/1035994825 (1) dated 29.09.2021 issued by the 2nd respondent, pending Appeal filed by the Petitioner vide Acknowledgment No.742605110271021 on the file of the 3rd Respondent.

For Petitioner : Mr.Srinath Sridevan

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

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus, calling for the records of 1st Respondent and to quash the order bearing DIN No.ITBA/COM/F/17/2021 - 22/1039384331 (1) dated 04.02.2022 and to quash the same and consequently, direct the 1st Respondent to grant a stay of the demand, made pursuant to Assessment Order bearing No.ITBA/AST/S/143(3)/2021 - 22/1035994825 (1) dated 29.09.2021 issued by the 2nd respondent, pending Appeal filed by the Petitioner vide Acknowledgment No.742605110271021 on the file of the 3rd Respondent.

2. The petitioner is an assessee under the respondents. For the Assessment Year 2018-19, there was an assessment order as against which, the petitioner preferred appeal before the Commissioner of Income Tax (Appeals) [in short 'CIT(A)'], where, the appeal is pending, where according to the Revenue, the outstanding due is Rs.2,69,77,178/-.

3. In order to avoid the demand to be made for making this outstanding, the petitioner already approached the Assessing Authority/1st respondent by filing an application under Section 220(6) of the Income Tax Act, 1961 [in short, the Act]. The said application since was rejected, the petitioner had challenged the said rejection order in the earlier round of litigation by filing writ petition in W.P.No.25164 of 2021 before this Court.

4. The said writ petition in W.P.No.25164 of 2021 was decided by a learned Judge of this Court by order dated 24.11.2021, where, he has passed the following orders:

> “2. This writ petition is being disposed at the time of admission considering the fact that the order has been relied on the Instruction No.1914 dated 02.12.1993 as modified on 31.07.2017 vide F.No.404/72/93-ITCC (FTS:284146). It is noticed that the decision of the Hon'ble Supreme Court in the decision of the Principal Commissioner of Income Tax & 5 Ors Vs. LG Electricals India Private Ltd (2018) 18 SCC 477 has held as under:
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> > ''having heard Shri Vikramjit Banerjee, learned ASG appearing on behalf of the appellant, and giving credence to the fact that he has argued before us that the administrative circular will not operate as a fetter on the Commissioner since it is a quasi-judicial authority, we only need to clarify that in all cases like the present, it will be open to the authorities, on the facts

of individual cases, to grant deposit orders of a lesser amount than 20%, pending appeal.''

3. Considering the same, since the order has not discussed the case of the petitioner on merits, as to whether the petitioner is entitled for waiver of amount below 20% of the disputed tax in the impugned order, the impugned order is quashed and the case is remitted back to the 1 st respondent to pass a speaking order in the light of the above decision of the Hon'ble Supreme Court. This exercise shall be carried out by the 1 st respondent within a period of 30 days from the date of receipt of a copy of this order. If desired, the petitioner may file appropriate application for being heard through Video Conferencing, in which case, the 1 st respondent shall consider the representation/the request of the petitioner, in accordance with the prevailing rules governing for such personal hearing and grant such an opportunity of being heard through Video Conferencing.”

5. Pursuant to which, the Assessing Authority has once again decided the application of the petitioner filed under Section 220 (6) of the Act and the same has now been rejected through the impugned order dated 04.02.2022. Challenging the same, the present writ petition has been filed.

6. Mr.Srinath Sridevan, learned counsel appearing for the petitioner would submit that, though the earlier order passed by the Assessing Authority, rejecting the application of the petitioner filed under Section 220 (6) of the Act was set aside and the matter was remanded and while, remanding the same, the learned Judge in the said order (cited supra) has indicated that, the Assessing Authority should consider the judgment made by the Hon'ble Supreme Court of India in the case of Principal Commissioner of Income Tax 5 & Ors Vs. LG Electronics India Private Limited, reported in (2018) 18 SCC 447, give reasons as to why, an amount at the rate of 20% or below the rate of 20% can be imposed as a condition precedent, for which, reasons to be given or to waive even the 20% amount of the disputed tax and by considering these aspects, orders should be passed, was the indication of the learned Judge in the said order. Despite that, the present rejection order once again has been made by the Assessing officer outrightly rejecting the plea of the petitioner for grant of stay by citing the reason that, in respect of the previous Assessment years for 2016-17 and 2017-18 also, appeals were filed by the petitioner / assessee, which are pending before the CIT(A), where, no stay had been granted and no amount had been paid or deposited by the assessee and every year i.e., from 2016-17 to 2017-18, the business profit has

enhanced. Therefore, there should be no financial difficulty for the petitioner to make the payment of the present due and by citing this reason and also citing the CBDT Instruction No.1914 dated 31.07.2017, the Assessing Authority has rejected the petition through the impugned order, which according to the learned counsel for the petitioner is against the factual matrix as well as against the direction given by this Court in the earlier order, where, indications had been made by the learned Judge, citing the judgment of the Hon'ble Supreme Court. Therefore, on that ground, the impugned order is to be interfered with.

7. Per contra, Mr.D.Prabhu Mukunth Arunkumar, learned Junior Standing Counsel appearing for the respondents would submit that, even in the earlier order, it has been indicated that, in the earlier order dated 29.10.2021, it has been indicated at Paragraph 3 that, even to grant stay as per the standardized quantum of lump-sum payment, as prescribed in the modified instruction No.1914 dated 31.07.2017, at the rate of 20% of the disputed demand was to be made. However, the said order since has been set aside and a direction was given by this Court in the earlier order to consider the merits of the case by using his discretion and to pass orders, he has considered the merits of the case and passed this order, where, even though it is stated that the stay petition is rejected, that means, it was rejected only for grant of complete stay without making any payment, but that does not mean that, it was rejected even for making the payment of 20% of the demand and if the petitioner comes forward to make such payment, certainly, the remaining 80% would be stayed, that would be the intend of the Assessing Officer, which is reflected in the order, he contended.

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

9. Insofar as the disposal of the stay applications made under Section 220(6) of the Act is concerned, the very provision itself contemplates that, it is purely the discretion of the Assessing Authority to decide such application and dispose of it, of course by imposing conditions depending upon the circumstances of the case.

10. By using the discretion, normally, the Assessing Authority would indicate a payment of 20% of the demand as a condition precedent for grant of stay for the remaining 80% of the demand, if the appeal is filed and it is pending before the Appellate Authority.

11. One such case in LG Electronics (cited supra), which

came to be considered by the Hon'ble Supreme Court, it has been indicated that, it is open to the authorities i.e., the authority, who exercise the power under Section 220 (6) of the Act on the facts of individual cases to grant deposit orders of a lesser amount than 20% pending appeal.

12. Based on this indication made in LG Electronics case (cited supra), the issue raised by the petitioner in his application was directed to be considered by the orders of the learned Judge in the earlier round of litigation by order dated 24.11.2021.

13. When that being so, now in the impugned order, the Assessing Authority has stated the reason that, in the previous assessment years, though appeal is pending no amount has been deposited by the petitioner and for consecutively three assessment years from 2016-17, 2017-18 and 2018-19, there has been a steady enhancement of the business profit. Therefore, there could be no impediment for the petitioner / assessee to make the payment of the present demand. Therefore, on the ground, primarily it appears that the order impugned has been passed by the Assessing Authority. Therefore, this Court feels that, the reasonings given in the present order is not in consonance with the direction issued by the learned Judge in the earlier order as cited above, where, specifically, the learned Judge directed to consider the law indicated by the Hon'ble Supreme Court in LG Electronics case (cited supra)

14. In that view of the matter, this Court has no hesitation to hold that, the present order cannot stand in the legal scrutiny, in view of the aforesaid facts and circumstances. Accordingly, it is liable to be set aside. In the result, the following orders are passed in this writ petition:

(i) That the impugned order is set aside and the matter is remitted back to the respondent for reconsideration. While reconsidering the same, the Assessing Authority, while using his discretion, even to impose conditions as contemplated under Section 220 (6) of the Act shall bear in mind, what has been indicated by the Hon'ble Supreme Court in LG Electronics case (cited supra) and in this regard, if any additional input to be supplied by the petitioner in his application in addition to the reasons already given, that can also be considered and accordingly, a reasoned order can be passed by using the discretion, where, if at all the Assessing Authority wants to impose any conditions as a precedent for grant of stay of the demand, that should be indicated in clear terms. The aforesaid exercise shall be undertaken by the Assessing Authority at the earliest on receipt of the copy of this order.

15. With these observations, this writ petition is disposed of accordingly. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Commissioner of Income Tax,
   Corporate Circle-1(1),
   121, Mahatma Gandhi Road,
   Nungambakkam, Chennai - 600 034.

2. The Income Tax Officer,
   National Faceless Assessment Centre,
   New Delhi.

3. The Commissioner of Income Tax (Appeals)
   National Faceless Appeal Centre,
   New Delhi.

+1cc to Mr.Srinath, Advocate, S.R.No.14554

+1cc to Mrs.Hema Murali Krishnan, Advocate, S.R.No.14389

W.P.No.4447 of 2022

PA(CO)
SU(25/05/2022)