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W.P.No.5650 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.5650 of 2022
and W.M.P.No.5737 of 2022

M/s.Taqa Neyveli Power Company Private Limited
Represented by its Managing Director
Mrs.Indumathi Yarlagadda
No.79, Kasthuri Avenue
MRC Nagar, Raja Annamalaipuram
Chennai – 600 028.

.... Petitioner

-Vs-

1.The Income Tax Appellate Tribunal – 'A' Bench
Represented by its Registrar
Rajaji Bhavan, 2nd Floor, Besant Nagar
Chennai – 600 090.

2.Principal Commissioner of Income Tax, Chennai-3
121, Mahatma Gandhi Road, Nungambakkam
Chennai 600 034.

3.Assistant Commissioner of Income Tax
Corporate Circle 3(1) Gandhi Road
Nungambakkam, Chennai 600 034.

4.Income Tax Officer
Corporate Ward 6(1) Chennai
No.121, Mahatma Gandhi Road
Nungambakkam, Chennai – 600 034.

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus forbearing the 4th respondent herein from proceeding



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further with the petitioner's assessment in relation to the Assessment Year 2016-17 undertaken pursuant to the 2nd respondent's order in ITBA/REV/F/REV5/2020-21/1031770406(1) dated 25.03.2021 until such time as the 1st respondent passed orders in ITA No.149/CHNY/2021.

For Petitioner : Mr.R.Sivaraman

For Respondents : Mr.A.P.Srinivas, Senior Panel Counsel

ORDER

The prayer sought for herein is for a Writ of Mandamus forbearing the 4th respondent herein from proceeding further with the petitioner's assessment in relation to the Assessment Year 2016-17 undertaken pursuant to the 2nd respondent's order in ITBA/REV/F/REV5/2020-21/1031770406(1) dated 25.03.2021 until such time as the 1st respondent passed orders in ITA No.149/CHNY/2021.

2. For the assessment year 2016-17, assessment order dated 19.12.2018 under Section 143(3) of the Income Tax Act, 1961 (In short 'the Act') was passed.

3. Subsequently, the revisional authority suo-motu reopened it by way of revision under Section 263 of the Act and ultimately on 25.03.2021, the revisional authority passed an order revising the earlier order dated 19.12.2018.



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4. As against the order of revision dated 25.03.2021, the assessee had preferred an appeal before the Tribunal ie., Income Tax Appellate Tribunal (ITAT), where hearing date has been fixed as 07.04.2022.

5. However, in the meanwhile by notice dated 06.02.2022, the assessing authority has directed to furnish the submissions of the assessee by 11.02.2022 along with necessary evidences / documents with regard to the findings made in the order under Section 263 of the Act and in case of non-submission of any reply, necessary order would be passed without giving any further opportunity. Only at this juncture, the assessee has come before this Court with the aforesaid prayer.

6. Heard Mr.R.Sivaraman, learned counsel for the petitioner/assessee who would submit that, when the appeal is pending before the ITAT against the order passed in revision under Section 263 of the Act, where since there has been no provision to seek for stay of further proceedings pursuant to the order under appeal, now the assessing authority has issued this communication dated 06.02.2022. By thus, they want to complete the proceedings and once they complete the proceedings, they may further go ahead with issuance of demand notice, thereby the assessee's appeal which is pending for consideration would become infructuous and therefore, till the disposal of the appeal, the assessing authority may be precluded from proceeding further pursuant to the notice dated 06.02.2022, he submitted.



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7. Per contra, Mr.A.P.Srinivas, learned Senior Panel Counsel appearing for the respondent Revenue would submit that, merely because the 06.02.2022 notice was issued by the assessing officer, the appeal filed by the petitioner would not become infructuous and the same, as a parallel proceedings, can be proceeded ahead by the ITAT for which date has been fixed.

8. Insofar as the present notice dated 06.02.2022 issued by the assessing officer is concerned, it is the duty of the assessing officer to complete the assessment proceedings pursuant to the findings given by the revisional authority in the order passed under Section 263 of the Act and therefore, that action cannot be prevented for any reason. Therefore, the present prayer sought for in this writ petition cannot be countenanced and hence liable to be rejected, he contended.

9. I have considered the submissions made by the learned counsel appearing for either side and have perused the materials placed on record.

10. As has been pointed out by the learned counsel for the petitioner assessee that, once an appeal has been filed against the very revisional order under Section 263 of the Act, where date has been fixed for hearing, at least till such time the assessing authority can wait. However in this case, it is the submission of the learned



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Standing Counsel for the Revenue that, an assessing officer need not wait endlessly for the outcome of the decision to be made by the Tribunal.

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11. Assuming that, if the assessing officer goes ahead with the completion of the assessment pursuant to the notice dated 06.02.2022 and if ultimately he passes an order, based on which this Court feels that at least the assessing authority would not proceed further to make any demand pursuant to such order of assessment, at least till the disposal of the appeal which is pending before the ITAT.

12. If this arrangement is made, that would save the interest of both the assessee as well as the Revenue. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order.

- That the assessing authority can go ahead with the assessment proceedings pursuant to the notice dated 06.02.2022 on the basis of the order passed by the revisional authority under Section 263 of the Act for which the petitioner shall cooperate by filing any reply or evidence or documents as sought for in the notice dated 06.02.2022 within a period of two weeks from the date of receipt of a copy of this order.
- It is made clear that, once an order is passed by the assessing authority and if it goes against the interest of the assessee, then pursuant to which no further proceedings including the notice for



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demand shall be made by the assessing officer against the assessee till the disposal of the appeal which is pending before the Income Tax Appellate Tribunal, for which already date of hearing is given as 07.04.2022.

- In view of the above, the ITAT is hereby directed to complete the hearing of the appeal proceedings and pass orders in the appeal on or before **31.05.2022** on its own merits and in accordance with law.
- It is further made clear that, once an order is passed by the Tribunal, depending upon the outcome of the said order, it is open to the assessing authority to go ahead against the assessee in case if that is necessary, in accordance with law.

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

14.03.2022

Index : Yes/No
Internet : Yes/No
KST

To

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R. SURESH KUMAR, J.

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