IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.7857 of 2022
and
W.M.P.No.7857 of 2022

VIP Housing and Properties
(Represented by its Partner Mr.J Kishore
14 and 16, 4th Floor, Raman Street,
T Nagar, Chennai 600017. ...Petitioner

Vs

1. The Income Tax Appellate Tribunal – 'A' Bench
   Represented by its Registrar
   'Rajaji Bhavan' - 2nd Floor
   Besant Nagar, Chennai – 600090.

2. Principal Commissioner of Income Tax (Central) Chennai – 2
   46/108, Mahatma Gandhi Road
   Nungambakkam, Chennai – 600034.

3. Assistant / Deputy Commissioner of Income Tax
   Corporate Circle 3(1) Chennai
   121, Mahatma Gandhi Road
   Nungambakkam, Chennai – 600034. ...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, forbearing the third respondent herein from proceeding further with the petitioner's assessment in relation to the Assessment Year 2016-17 undertaken pursuant to the second respondent's order dated 30.03.2021 until such time as the first respondent passed orders in ITA No.46/CHNY/2022.

For Petitioner : Mr.N.V.Balaji

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

ORDER

The prayer sought for herein is for a Writ of Mandamus, forbearing the third respondent herein from proceeding further with the petitioner's assessment in relation to the Assessment

Year 2016-17 undertaken pursuant to the second respondent's order dated 30.03.2021 until such time as the first respondent passed orders in ITA No.46/CHNY/2022.

2.This writ petition relates to the Assessment Year 2016-17, for which, already assessment was over. However, invoking Section 263 of the Income Tax Act, 1961, [in short, 'the Act'], the Principal Commissioner has passed an order on 30.03.2021, as against which, the petitioner has filed an appeal before the Income Tax Appellate Tribunal [In short 'ITAT'], the Assessing Authority has issued a notice on 21.01.2022, where, even though the petitioner sought for an order of stay of the order impugned therein, for want of power as expressed by the Tribunal, it has rejected the said application for stay filed by the petitioner/assessee.

3.In the meanwhile, though the appeal filed by the assessee is pending before the ITAT, the Assessing Officer has issued a notice on 26.03.2022, directing the petitioner to comply with the notice and submit information for completion of the assessment proceedings for the Assessment Year 2016-17 and it had also scheduled a hearing on 28.03.2022.

4.Only on these circumstances, the petitioner has approached this Court by filing the present writ petition, seeking for a Writ of Mandamus, forbearing the respondent / Assessing Authority to proceed further, pursuant to the order passed by the Principal Commissioner under Section 263 of the Act, which is a subject matter before the ITAT.

5.Heard Mr.N.V.Balaji, learned counsel for the petitioner/assessee, who having reiterated the aforesaid, would seek indulgence of this Court.

6.Heard Mr.A.P.Srinivas, learned Senior Standing Counsel appearing on behalf of the respondents/Revenue, who would submit that, merely because an appeal is filed against the order passed by the authority concerned under Section 263 of the Act, the power of the Assessing Authority is not precluded, he can very well issue a notice to complete the assessment as directed by the Principal Commissioner under Section 263 of the Act. Therefore, such notice was issued on 26.03.2022, fixing a date for hearing. However, the petitioner/assessee has not complied with the same and had rushed to this Court by filing the present writ petition. Therefore, this writ petition is liable to be rejected, he contended.

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

8.The issue raised in this writ petition is not a new one for this Court as number of such cases had already come where, indulgence has been shown by this Court. One such writ petition is W.P.No.5650 of 2022 in the matter of M/s.Taqa Neyveli Power Company Private Limited Vs. The Income Tax Appellate Tribunal – 'A' Bench, Represented by its Registrar and 2 others, dated 14.03.2022, where this Court on the similar circumstances, having considered the plea raised therein, has passed the following orders:

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

9. Here also the situation is similar, where, as against the order under Section 263 of the Act, the appeal has been admittedly filed, which is pending before the ITAT, though attempt has been made to seek for a stay, that has been negated for the reason stated above.

10. Be that as it may, once the appeal has been entertained and unless it is decided one way or other, if the Assessing Officer is permitted to go ahead pursuant to the order passed by the authority concerned under Section 263 of the Act, then that will make the very challenge in the appeal before the ITAT otiose.

11. In that view of the matter, following the earlier order passed by this Court, I am inclined to dispose this writ petition with the following orders:

- That the assessing authority can go ahead with the assessment proceedings pursuant to the notice dated 26.03.2022 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 26.03.2022 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 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 12.04.2022.

- 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.

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

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Income Tax Appellate Tribunal – 'A' Bench
   Represented by its Registrar
   'Rajaji Bhavan' - 2nd Floor
   Besant Nagar, Chennai – 600090.

2. The Principal Commissioner of Income Tax (Central) Chennai – 2
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   Corporate Circle 3(1) Chennai
   121, Mahatma Gandhi Road
   Nungambakkam, Chennai – 600034.

+1cc to Mr.A.P.Srinivas, Standing Counsel for IT
High Court, Madras S.R.No.21947
+1cc to Mr.N.V.Balaji, Advocate, S.R.No.22838

W.P.No.7857 of 2022

CA(CO)
RGA(20/05/2022)