IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

W.P.No.16689 of 2023 and
W.M.P.No.15981 of 2023

TREADSDIRECT LIMITED
PAN:AAACE9328C
2000 Trichy Road, Singanallur Post, Coimbatore – 641 005,
Not Known as ELGI RUBBER COMPANY LIMITED
Represented by its Chief Financial Officer
Mr.S.R.Venkatachalam Son of Mr.S.Ramasamy aged 66 years,
S.F.No.164/2, Pollachi Road, SIDCO Industrial Estate,
Kuruchi, Coimbatore – 641 021. ... Petitioner

vs.

1. The Assistant Commissioner of Income Tax,
   Corporate Circle – I,
   Main Building #63, Race Course Road,
   Coimbatore – 641 018.

2. The Income Tax Offcer,
   Assessment Unit,
   National Faceless Assessment Centre,
   Income Tax Department,
   Ministry of Finance,
   Room No.401, 2nd Floor, E-Ramp,
   Jawaharlal Nehru Stadium,
   Delhi – 110 003.

3. The Commissioner of Income Tax (Appeals),

National Faceless Assessment Centre,
Income Tax Department,
Ministry of Finance,
Delhi – 110 003. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus to call for the records in DIN & Letter No.ITBA/COM/F/17/2022-23/1049955145(1) dated 21.02.2023 on the file of the 1st respondent for the Assessment Year 2015- 2016, and quash the same and direct the 1st respondent to grant stay of collection of outstanding tax demand pending disposal of the appeal before the 3rd respondent.

For Petitioner : Mr.M.P.Senthilkumar

For Respondents : Ms.S.Premalatha,
Junior standing counsel

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ORDER

This writ petition has been filed seeking for issuance of a writ of certiorarified mandamus to quash the letter of the first respondent in DIN & Letter No.ITBA/COM/F/17/2022-23/1049955145(1) dated 21.02.2023 on the file of the 1st respondent for the Assessment Year 2015- 2016, and quash the same and direct the 1st respondent to grant stay of collection of outstanding tax demand pending disposal of the appeal before the 3rd respondent.

2. The case of the petitioner is that the petitioner company was amalgamated with Elgi Rubber International Limited in the year 2010. Subsequently, during the year 2011 the said Elgi Rubber International Limited was renamed as Elgi Rubber Company Limited as per fresh certificate of incorporation. Prior to the said amalgamation the petitioner was assessed to Income Tax on the file of the first respondent herein under PAN.No.AAACE9328C. Some of the customers have wrongly credited TDS of Elgi Rubber Company Limited in old PAN (AAACE9328C) of the petitioner company from the year 2011 onwards even though they were already informed about the amalgamation, change of PAN and also the change of name of the company. During the assessment proceedings from the year 2011, the Elgi Rubber Company Limited had requested the Jurisdictional Assessing Officer for considering the TDS remitted in the old PAN of the petitioner company, which upon due verification allowed the credit in favour of the present company of Elgi Rubber Company Limited.

3. Subsequently, the income tax return was filed in the present PAN (AABCE9569M) with regard to Elgi Rubber Company Limited for the assessment year 2015-16 on 26.11.2015. Thereafter, a notice u/s.148 of the Income Tax Act, 1961 was issued on 29.03.2021 on the ground that the petitioner was involved in financial transcations during FY 2014-15, since the TreadsDirect Limited (PAN:AAACE9328C) is non-existent, could not file the return. The second respondent issued show cause notice dated 23.03.2022 and the assessment u/s.147 r/w 144 r.w 144B was completed on 29.03.2022 with addition to a sum of Rs.5,13,82,411/- u/s 69A of the Act. The petitioner filed rectification petition dated 26.04.2022 before the first respondent stating that in the computation sheet, assessment tax was levied on an amount of Rs.10,27,64,822/- instead of Rs.5,13,82,411/-, which was found to be correct and the order was passed on 17.01.2023 computing the total demand at Rs.4,35,11,333/-. Aggrieved over the same, the petitioner preferred an appeal before the third respondent which is still pending. While so, the petitioner filed a petition dated 01.2.2023 before the first respondent praying to stay collection of the demand, which was rejected vide oder dated 21.02.2023 directing the

petitioner to pay 20% of the entire outstanding demand within 7 days from the date of receipt of the impugned order. Challenging the same the present writ petition has been filed.

4. The learned counsel for the petitoner submits that the assessee company ie., M/s.Treadsdirect Ltd and one of its group companies named M/s.Elgi Rubber Company Ltd (PAN AAACE4565F) got amalgamated with another company named M/s.Elgi Rubber International Ltd (PAN AABCE9596M) with effect from 01.04.2010, after obtaining the scheme of amalgamation duly approved by this Court. However, because of the resemblance of the new name of the above company and the name of the assessee company, the above parties had used the wrong PAN while filing TDS statements.

5. He further submits that instead of giving the PAN of M/s.Treads Direct (India) Ltd.(AADCT5291Q) subsequently renamed as M/s.Treads direct Ltd), the PAN of the assessee company (AAACE9328C) was given by the deductors while filing their TDS statements which resulted in the amounts getting credited to the Form

No.26AS of the assessee company. He further contended that the assessee company ceased to exist w.e.f. 01.04.2010 and was not at all in existence during the financial year 2014-15, it is unambiguous that the financial transactions referred to do not belong to the assessee compay. It belonged to a ground company named M/s.Treads Direct (India) Ltd and the said company had already reported the Income from these transactions in its ROI. Therefore, the addition made in the hands of the assessse company is not warranted. Hence, rejecting the stay petition filed by the petitioner by a cryptic, non speaking order and non-considered order without proper application of mind is against the principles of natural justice.

6. The learned standing counsel appearing for the respondents submits that though a final opportunity has been given to M/s.Treadsdirect Ltd by issuing show cause notice dated 23.03.2022 to explain its financial transactions, the assessee has neither filed ROI in response to the notice u/s.148 of the Act nor furnished any reply / submission. Hence, the assessse's request for grant of stay of Rs.4,35,11,330/- till the disposal of the appeal cannot be acceded to.

7. Heard learned counsel appearing on either side and perused the materials placed on record.

8. Admittedly the petitioner filed an appeal against the order in original passed by the first respondent before the third respondent which remained pending and a stay petition dated 01.02.2023 was filed before the first respondent seeking stay of collection of demand. However, the first respondent while entertaining the stay application directed the petitioner to pay 20% of the demand amount, which was passed elaborately on merits keeping in mind the economic condition of the petitioner. The order being a reasoned one and assessing the status and financial condition of the petitioner, as only 20% of the entire demand amount is directed to be deposited, this Court is of the view that the said discretion of the first respondent vide order dated 21.02.2023 is just and reasonable, which cannot be interfered with. Hence, this Court in not inclined to grant any affirmative direction in favour of the petitioner.

9. Accordingly, for the above reasons, this writ petition is dismissed. No costs. Consequently connected miscellaneous petition is closed.

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Index : Yes/No
Speaking order / Non-speaking order
Neutral Citation Case : Yes/No
(rap)

To

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M.DHANDAPANI, J.

(rap)

W.P.No.16689 of 2023

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1/2

W.M.P.No.15976 of 2023
in

W.P.No.16689 of 2023

M.DHANDAPANI., J.

Dispensed with for the present.

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(2/2)

(rap)