IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2024

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.No.10165 of 2022
and
W.M.P.Nos.9857 and 9860 of 2022

M/s.SVN Agro Refineries,
Represented by its Partner,
V.N.Ravi Varma,
No.1/66, Vengaivasal Main Road,
Santhosapuram,
Chennai – 600 073.
PAN:AAQFS1323Q ... Petitioner

Vs.

1. The Assistant Commissioner of Income Tax,
   Non – Corporate, Circle 22(1) (TBM),
   1st Floor, Ramakrishna Street, West Tambaram,
   Chennai – 600 045.

2. The Principal Commissioner of Income Tax-1,
   No.121, Nungambakkam High Road,
   Chennai – 600 034. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari to call for the records of the Respondent dated 10.03.2022 in DIN and Notice No:ITBA/ADM/S/26/2021-22/1040550407(1) and quash the same.

For Petitioner : Mr.T.Vasudevan

For Respondents : Mr.B.Ramanakumar
Senior Standing Counsel

ORDER

The Petitioner had suffered adverse Orders issued under Section 143(3) of the Income Tax Act, 1961 for the Assessment Years 2009-2010, 2012-2013 and 2018-2019. The Petitioner had also suffered consequential interest proceedings under Section 226(3) of the Income Tax Act, 1961 for the Assessment Year 2013-2014.

2. The Petitioner has paid the tax for the Assessment Year 2009-2010, 2012-2013, and interest for the Assessment Year 2014-2015 on various dates.

3. The Petitioner has also challenged the respective Assessment Orders passed under Section 246A of the Income Tax Act, 1961 for the Assessment Year 2012-2013 and 2018-2019 before the Commissioner of Central Excise.

4. The case of the Petitioner is that all the amounts due for the Assessment Years barring 2018-2019 had been paid by the Petitioner, however Notice under Section 226(3) of the Income Tax Act, 1961 was issued to the Petitioner's bank namely Tamil Nadu Mercantile Bank Limited, Chennai on 31.01.2022.

5. It is the specific case of the Petitioner that the Petitioner has filed an appeal as against the Assessment Order dated 02.03.2021 for the Assessment Year 2018-2019 and the said appeal is still pending consideration before the Appellate Commissioner.

6. It is submitted that once an appeal is filed the Respondents at best are entitled to recover the Petitioner to deposit maximum of 20% in terms of Office Memorandum of the Central Board of Direct Taxes dated 31.07.2017, instead the Respondents have recovered the entire tax confirmed vide Order dated 02.03.2021 for a sum of Rs.32,70,801/-.

7. It appears that the Petitioner had sent a grievance petition to the 1st Respondent which has been disposed of by the 1st Respondent stating that in the grievance letter filed by the Petitioner there is no mentioning about the Assessment Order.

8. It is further submitted that in the said communication that request for stay of demand for the Assessment Year 2018-2019 filed through an application on 09.02.2022 was treated as infructuous under Section 220(6) of the Income Tax Act, 1961 in view of the recovery of the entire outstanding undisputed amount through recovery action under Section 226(3) of the Income Tax Act, 1961, pursuant to Notice dated 31.01.2022 issued to the Petitioner's aforesaid bank.

9. The learned counsel for the Petitioner submits that at best the Respondents are entitled to retain only 20% of the disputed tax for the Assessment Year 2018-2019.

10. The learned Senior Standing Counsel for the Respondents on the other hand would submit that for the Assessment Year 2018-2019 Assessment Order was passed on 02.03.2021 and appeal was filed only on 08.02.2022.

11. It is submitted that before the appeal was filed on 08.02.2022 and recovery has been made long before and therefore, no interference is warranted.

12. That apart, it is submitted that an appeal itself was filed belatedly beyond the statutory period prescribed for filing the appeal.

13. It is submitted that appeal should have been filed latest by 01.04.2021, however, the appeal was filed only on 08.02.2022 and therefore, the Department cannot be found fault.

14. By way of rejoinder, learned Counsel for the Petitioner would submit that the Petitioner could not file appeal in time in view of the Covid-19 pandemic and when the Assessment Order was passed on 02.03.2021, the

country was still under the grip of second wave of Covid-19 (Omicron).

15. Having considered the submissions made by the learned counsel for the Petitioner and the learned Senior Standing Counsel for the Respondents and considering the Office Memorandum of the Central Board of Direct Taxes dated 31.07.2017 bearing reference:-F.No.404/72/93-ITCC, I am of the view that since the Petitioner has filed an appeal against the Assessment Order dated 02.03.2021 and 08.02.2022, it is to be construed that the appeal was filed in time in the light of the decision of the Hon'ble Supreme Court in In Re:Cognizance for Extension of Limitation (Suo motu W.P.(C).No.3 of 2020).

16. Under these circumstances, there shall be a direction to the Respondents to re-credit the balance 80% of the amount recovered for the Assessment Year 2018-2019 within a period of thirty (30) days from the date of receipt of a copy of this Order. The Respondents are also directed to return 80% of the amounts appropriated as also for the amounts paid for other years with interest without prejudice. The Respondents may however obtain such security which may be desired to secure the interest of the Department.

17. The Writ Petition stands disposed of with the above observations and directions. No cost. Consequently, connected miscellaneous petitions are closed.

24.09.2024

Index : Yes/No
Speaking/Non-speaking Order
Neutral Citation :Yes/No
rgm

To

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C.SARAVANAN, J.

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