

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.12.2017
Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.33765 of 2017
and
W.M.P.Nos.37408 and 37410 of 2017

M/s.Rapid Care Transcription P. Ltd.,
Rep.by its Director: V.Venkatasubramanian
Old No.21, New No.41, VLV Complex
Mount Road, Little Mount, Saidapet,
Chennai 600 015.Petitioner

Vs.

The Income Tax Officer
Corporate Ward 5(4)
Room No.403, Aayakar Bhavan
Main Building, No.121, M.G.Road,
Nungambakkam, Chennai 600 034.Respondent

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, forbearing the respondent from proceeding further for the recovery of the balance amount pursuant to the order, dated 27.10.2017 (served on the petitioner on 11.12.2017) of the Commissioner of Income Tax (Appeals)-3, Chennai, confirming the order, dated 23.09.2016 passed by the respondent against the petitioner relating to the Assessment Year 2009-2010, which action, was initiated during the period and before the expiry of the period of limitation for filing appeal before the Tribunal prescribed under the Income Tax Act.

For Petitioner : Mr.K.Jayachandran

For Respondent : Mrs.Hema Muralikrishnan
Senior Standing Counsel

O R D E R

Heard Mr.K.Jayachandran, the learned counsel appearing for the petitioner and Mrs.Hema Muralikrishnan, the learned Senior Standing Counsel, accepting notice on behalf of the respondent. With consent on either side, the Writ Petition is taken up for disposal.

2. The petitioner has filed this Writ Petition, praying for issuance of a writ of mandamus, forbearing the respondent from proceeding for the recovery of the balance amount, pursuant to the order, dated 27.10.2017. By the said order, dated 27.10.2017, the petitioner's Appeal filed before the Commissioner of Income Tax, (Appeals)-3, Chennai, challenging the order of assessment for the year 2009-10 was dismissed. As against the said order, the petitioner has an alternate remedy of filing an Appeal before Income Tax Appellate Tribunal (ITAT) and the period of limitation is 60 days, under Section 253 of the Income Tax Act, 1961 (hereinafter, referred to as 'the Act'), and the period of limitation of 60 days would commence from the date of receipt of copy of the order appealed against.

3. From the postal cover, by which, the petitioner was communicated the impugned order, it is seen that, the same was despatched from the office of the Commissioner of Income Tax (Appeals)-3 on 09.12.2017, and the petitioner has received the same on 11.12.2017, (as could be seen from the seal affixed on the reverse of the cover). Therefore, the period of limitation shall commence from 12.12.2017, i.e., excluding the date, on which, the impugned order was received by the petitioner. However, much before the expiry of the 60 days limitation period, the respondent has issued a notice under Section 226(3) (iii) of the Act directly to the petitioner's bank, and attached two of their bank accounts, bearing current Account No.50200027946055, for a sum of Rs.50,000/- and Account No.18642560000235, for a sum of Rs.10,67,619.14/-, which have been paid by the petitioner's bankers by means of demand draft, without intimation to the petitioner.

4. The manner, in which, the bank accounts of the petitioner have been attached and the monies have been recovered by the respondent is incorrect, for more than one reason. Firstly, on account of the fact that the period of limitation for filing Appeal before the ITAT had not expired. Secondly, without notice to the petitioner and without affording an opportunity of personal hearing to the petitioner to rebut the stand that, they are not an assessee in default, proceeding could not have been initiated directly through the Bank.

5. Therefore, the issue would be, as to whether the petitioner would be entitled to receive the amounts, which were collected through the Bank, by filing Appeal before ITAT. This issue was considered by the Mumbai Income Tax Appellate Tribunal, in the case of Rpg Enterprises Ltd., Vs. Deputy Commissioner of Income Tax, dated 14.07.2000 and the Tribunal observed that, 'the assessee would be entitled to get back the money till a decision is rendered by the Tribunal. In fact, this Court had an occasion to consider the issue as to the

correctness of the order of attachment passed on an assessee without issuing notice under Section 156 of the Act, in the case of M/s.Coroamandel Oils Pvt., Ltd., Vs. The Tax Recovery Officer T 1 and others in W.No.26821 of 2016, and after taking into consideration of its intra Court's decision, in the case of Sri Lakshmi Brick Industries Vs.The Tax Recovery Officer reported in (2013) 351 ITC 0345 and the judgment of the Hon'ble Supreme Court of India, in the case of (Sri Mohan Wahi Vs. Commissioner of Income Tax and others reported in (2001) 248 ITR 799, by order, dated 14.09.2016, allowed the Writ Petition on the following terms:-

'' 14. The learned Senior Standing Counsel for the Revenue pointed out that, in the decision rendered in Sri Lakshmi Brick Industries (supra), the Court did not interpret the expressions ''final'' and ''conclusive'', and therefore, the said decision cannot be applied to the facts of the case on hand. This contention does not merit acceptance, as the decision in Sri Mohan Wahi's case (supra) was rendered, taking into consideration the scope of Section 225 (3) read with Rule 12 of second schedule to the Act. This was taken note of in Sri Lakshmi Brick Industries (supra), and therefore, the ground raised by the Revenue, is not a ground to distinguish the decision in Sri Lakshmi Brick Industries (supra).

15. In the considered view of this Court, the decision in Sri Lakshmi Brick Industries (supra) would apply with full force to the case of the petitioner herein.

16. The learned Senior Standing Counsel for the Revenue has referred to the decision in Ghanshyamdas Jatia's case, and submitted that, unless the outstanding demand is reduced by an order in Appeal, or other proceeding, and such order has become final and conclusive, the question of lifting the attachment does not arise, and the position would be that, the certificate proceeding already started under the original assessment in such case remains in abeyance, subject to the provisions of Section 225 (4) abiding with the last order, as it attains finality and conclusiveness. In the said decision, the matter was pending before the Tribunal,

and the Court observed that the matter had not attained the character of final and conclusive order, and therefore, it did not have any effect on the certificate proceeding, which remained in abeyance pending decision by a final and conclusive order.

17. However, in contradistinction to the present case, the Appeal filed by the petitioner/assessee has been allowed in full by ITAT, and demand of tax, in respect of the assessment year 2009-10 was Nil, and with regard to two assessment years, it has resulted in refund. Thus, to say that the order of attachment should still continue till the matter reaches the Hon'ble Supreme Court would be an interpretation, which would be inconsistent with the provisions of the Act, more particularly, by reading together Sections 222 and 225 of the Act.

18. As rightly pointed out by the learned counsel for the petitioner, the object of the demand is to secure the interest of the revenue. The Income Tax Officer acquires jurisdiction to attach the property based on a certificate issued by the Tax Recovery Officer, certifying that the assessee is a defaulter. As on date, the Tax Recovery Officer has not issued such a certificate. Even assuming that the Tax Case Appeal filed by the Revenue is entertained, that by itself, will not make the petitioner as an assessee in default, on account of the fact that the entire tax liability is wiped of pursuant to the order of ITAT.

19. Assuming further that the Revenue succeeds in the Tax Case Appeal, automatically, the assessee will not be treated as defaulter, since the consequential orders have to be passed, notice of demand have to be issued, time has to be granted, thereafter, proceeding has to be initiated and certificate has to be issued by the Tax Recovery Officer, declaring the petitioner as defaulter, and only then, the order of attachment of immovable property of the petitioner could be effected. Furthermore,

the decision in the case of Sri Lakshmi Brick Industries (supra) was challenged by the Revenue, by way of Writ Appeal, being Writ Appeal No.1527 of 2013 and it is pending, and it is submitted that the issue involved in the Writ Appeal has become infructuous.

20. Thus, the decision of this Court in the case of Sri Lakshmi Brick Industries (supra) being the jurisdictional Court for the respondent, the same would bind over the respondent, as held by the Hon'ble Supreme Court in the case of (M/s. East India Commercial Co. Ltd., and another Vs. Collector of Customs, Calcutta) reported in A.I.R. (1962) S.C. 1893, that the law declared by the highest court in the State is binding on authorities, or tribunals under its superintendence, and that they cannot ignore it, either in initiating a proceeding or deciding on the rights involved in such a proceeding.

21. The learned Senior Standing Counsel for the Revenue relied upon the decision of this Court in Pyramid Saimira Theatre Ltd., (supra). On a carefully going through the said decision, it is noted that the decision was on an entirely different issue, not with specific reference to the point, which has been agitated as to the effect of expressions 'final' and 'conclusive'. Therefore, the said decision does not render support to the stand of the Revenue.

22. For all the aforesaid reasons, the Writ Petition is allowed, and the first respondent/Tax Recovery Officer is directed to pass appropriate orders for lifting the order of attachment of the immovable property of the petitioner, and return the original documents given as surety to the second respondent, vide letter, dated 04.09.2012, and pass necessary consequential orders with due intimation to the Sub Registrar, Neelankarai. The above direction shall be complied with by the first respondent, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Writ Miscellaneous Petitions are closed. "

6. In the light of the above decisions, this Court would be fully justified in issuing appropriate direction to re-credit the amount to the petitioner's bank accounts. However, since it is represented that the petitioner is already in the process of filing Appeal to the ITAT, this Court is inclined to grant liberty to the petitioner to seek for such relief before the ITAT. It is further represented that, apart from the above two bank accounts, there is third account maintained by the petitioner, which is EEFC account, bearing No.50200025012377, at HDFC Bank, T.Nagar Branch, Chennai, which is yet to be attached by the respondent, and it is stated that the respondent is present in the petitioner's bank to attach the said account, while this Writ Petition is being argued before this Court.

7. Considering the above facts, the respondent is restrained from attaching the petitioner's EEFC Account No.50200025012377, at HDFC Bank, T.Nagar Branch, Chennai, till the petitioner's approaches the ITAT, challenging the order passed by the Commissioner of Income Tax (Appeals) -3 Chennai, dated 27.10.2017, by way of Appeal. The learned Senior Standing Counsel for the Revenue expresses her apprehension that the petitioner/assessee may indefinitely delay in filing the Appeal, and therefore, states that, the Court should fix time limit for filing such Appeal before the ITAT, for, via., this order, the respondent is injuncted from attaching the petitioner's EEFC A/c No.50200025012377, and this benefit should not last too long. The Revenue need not have any such apprehension since already steps have been taken by the assessee, in filing the Appeal. In any event, the petitioner/assessee shall file Appeal before the ITAT within a period of four weeks from the date of receipt of this order.

8. With the above direction and observations, this Writ Petition stands disposed of. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

dna/

Sd/-

Assistant Registrar(CS IX)

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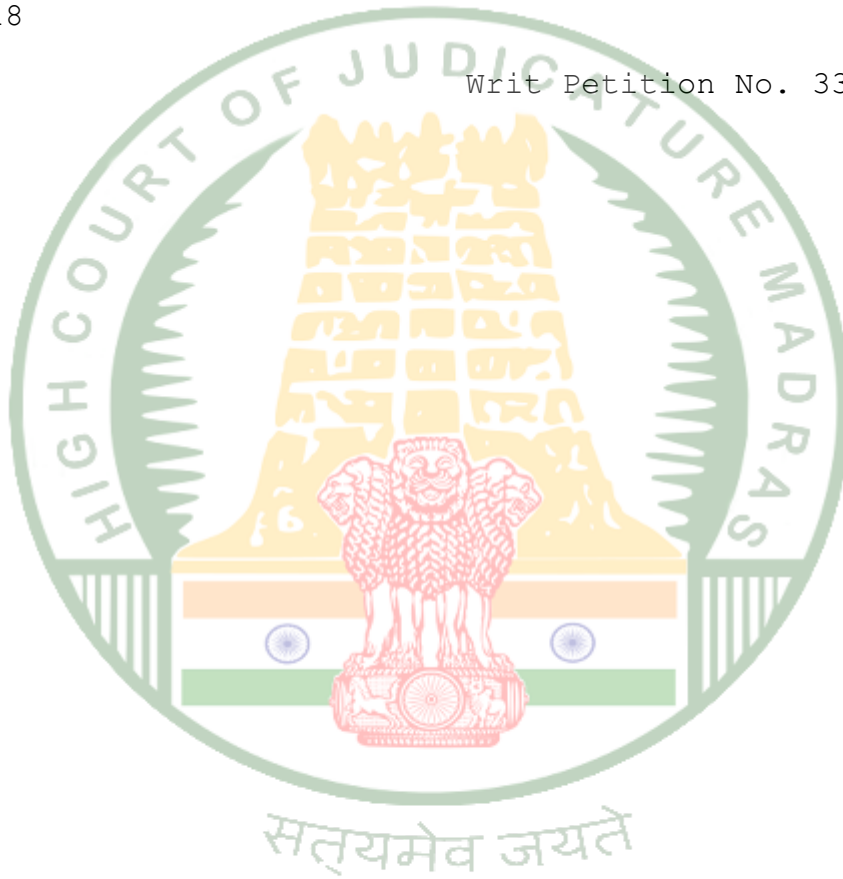
Sub Assistant Registrar

To
The Income Tax Officer
Corporate Ward 5(4)
Room No.403, Aayakar Bhavan
Main Building, No.121, M.G.Road,
Nungambakkam, Chennai 600 034.

+1cc to Mrs.Hema muralikrishnanan, Advocate SR.No.92396
+1cc to Mr.Jayachandran, Advocate Sr.No.92300

MG(CO)
sm:8.2.2018

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