IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2016

CORAM:

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

W.P.No.42891 of 2016
and W.M.P.Nos.36785 & 36786 of 2016

M/s.Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
No.3/137, Sala Medu,
Valutha Reddy Post,
Villupuram – 605 602. ... Petitioner

Vs.

1.The Chief Commissioner of Income Tax-4,
Aayakkar Bhavan – 121,
Mahatma Gandhi Road,
Chennai – 600 034.

2.The Deputy Commissioner of Income Tax,
Villupuram Circle-I,
No.1, Chairman Subbarayar Street,
Villupuram – 605 602.

3.State Bank of India,
Main Branch, rep by its Branch Manager,
No.2, K.K.Road,
Rahman Complex,
Villupuram – 605 602.

4.State Bank of India – SME Branch,
1st Floor, Shri Suswani Towers,
No.595 – 597, Nehuruji Road,
Villupuram – 605 602.

5.Indian Bank,
793, Nehuruji Road,
Villupuram – 605 602.

6.Indian Overseas Bank,
793, Nehuruji Road,
Villupuram – 605 602.

7.Axis Bank,
Ravindran Arcade,
Trichy Road,
Opp to New Bus Stand,
Villupuram – 605 602. ... Respondents

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorari to call for the records of the 1st respondent in C.No.124/CC-4/2016-17 and to quash the impugned order dated 24.11.2016 for the assessment years 2008-09 to 2010-11 & 2013-14 relating to stay of disputed taxes.

For Petitioner : Mr.J.Balachander
for M/s.S.Indumathi

For Respondents : Mr.J.Narayanasamy (R1 & R2)

O R D E R

1.Issue notice. Mr.J.Narayanasamy, accepts notice on behalf of the respondent nos.1 & 2. With the consent of the parties, the writ petition is taken up for final disposal.

2.In the writ petition, the petitioner, which is a Tamil Nadu State Government Transport Undertaking seeks a direction for quashing of order dated 24.11.2016 passed by the respondent no.1 in respect of the assessment years 2008-09 to 2010-11 & 2013-14.

3.Briefly, the challenge to the said order arises in the background of the following broad facts:

3.1 It is the case of the petitioner that it is in the business of running and maintaining transport services in the State of Tamil Nadu and as a part of its social obligation and in furtherance of the policies of the State Government, it offers subsidy qua travel costs incurred by the students both at School and College level.

3.2 According to the petitioner, the State Government has issued a G.O.Ms.No.135 dated 20.05.2004, (G.O.), whereby, all students studying in Standard I to XII are provided with free passes for travelling between their residence and school; and likewise students enrolled in Colleges are provided with concessional passes, which involves grant of subsidy to the extent of fifty percent (50%) of the face value of the tickets. Fifty percent

(50%) of the subsidy, which is given to the College students, is to be reimbursed by the State Government.

3.3 Insofar as the mofussil State Corporations are concerned, the Government of Tamil Nadu, vide the very same G.O., has apparently, directed State Transport Corporations to bear the burden of 20% of the face value of the tickets, qua tickets issued to students. This direction has been also issued in furtherance of public weal. The petitioner is one such mofussil State Corporation, and therefore, was required to bear the burden of 20% of the face value of the tickets issued to students. In consonance with the aforesaid scheme, the petitioner has been declaring as its income, *albeit,* on actual receipt basis only 80% of the value of the tickets.

3.4.The averments made in the writ petition show that the petitioner and the Revenue are engaged in litigation on this aspect.

3.5. It is in this context that the Revenue for the assessment years in issue, i.e., 2008-09 to 2010-11 & 2013-14 has added back certain amounts towards petitioner's income. The details of the amounts disallowed and added back to the petitioner's income, and the tax, along with the interest, claimed by the Revenue is set out hereafter:

Sl.No.	Asst. Year	Amounts disallowed and added as income towards as social cost	Additional tax determined as due with interest
1.	2008-09	Rs.42,64,21,778	Rs.20,30,25,804
2.	2009-10	Rs.48,56,45,837	Rs.19,88,13,089
3.	2010-11	Rs.48,72,30,141	Rs.10,71,07,966
4.	2011-12	Rs.53,70,98,000	NIL
5.	2012-13	Rs.62,99,77,926	NIL
6.	2013-14	Rs.83,60,39,357	Rs.34,72,73,680
	Total	Rs.340,24,13,039	Rs.85,62,20,539

3.6 The aforesaid table would show that insofar as the assessment years 2011-12 and 2012-13 are concerned, even according to the petitioner, though additions have been made to income, no tax is claimed by the Revenue.

3.7 It appears that it is in this background that the petitioner filed appeals, which are pending adjudication before the Commissioner of Income Tax (Appeals).

3.8 However, pending appeals, the petitioner sought a stay on the demand.

3.9. The record shows that, vide notice dated 26.09.2016, the petitioner was communicated that the Principal Commissioner of Income

Tax, Pondicherry had granted stay on the demand raised on the condition that 15% of the demanded amount i.e., Rs.85,62,17,539/- is deposited by the petitioner. The relevant extract, as communicated to the petitioner, vide notice dated 26.09.2016, is set out hereinafter:

> "...
>
> Please note that your stay petition for staying the above demand before the Hon'ble Principal Commissioner of Income Tax, Pondicherry has been disposed of with the following comments:
>
> > "Considering the facts of the case, the involvement of the government policy cost and financial status of the assessee Company, it should be in the fitness of things if pending disposal of the first appeal, an amount of 15% of the demand for all the years involved be collected. Balance 85% may be stayed till disposal of the first appeal. A.O. may take urgent steps to recover 15% of the outstanding demand within a month positively".
>
> Hence, you are hereby requested to pay 15% of above demands immediately. Failure to do so will lead to coercive recovery steps."

4. The petitioner being aggrieved, escalated the matter further and, accordingly, approached the Commissioner of Income Tax for stay of the demand. The Revenue, vide communication dated 24.11.2016, informed the

petitioner that the Commissioner of Income Tax had rejected its petition for stay. In other words, the Commissioner of Income Tax had confirmed the terms of stay of demand as set out by the Principal Commissioner of Income Tax, Pondicherry, in his order.

5. I have asked the learned counsel for the Revenue as to whether complete copies of the aforementioned orders were supplied to the petitioner.

5.1 The learned counsel for the Revenue says that the record would show that only extracts were supplied, and that, full and complete version of the orders passed by the Principal Commissioner of Income Tax and Commissioner of Income Tax were not supplied to the petitioner.

5.2 I must record that the learned counsel for the petitioner has confirmed the said position.

6. According to me, the practice followed by the revenue is completely unacceptable. In my opinion, the Revenue should supply a copy of the entire order to the assessee, instead of, communicating only the operative directions issued by the concerned officer, as is done in this case.

6.1. Be that as it may, the orders as found on record, to my mind, do not disclose the reasons, at least not in entirety, which propelled the Revenue to stay the demand on the terms indicated therein. While, the order of the Commissioner of Income Tax appears to be completely silent, there is a reference in the Principal Commissioner's order to the fact that since Government policy is involved and given the financial status of the petitioner, the demand is stayed subject to deposit of 15% of the demanded amount by the petitioner. There is no discussion, whatsoever, with regard to whether or not the petitioner had a prima facie case or the balance of convenience was in its favour. There is also no reference to harm, if any, which would be caused to the petitioner if, a complete stay of the demand, as sought, was not granted.

7. It is the case of the petitioner, as indicated above, that, since, the burden of 20% of the face value of the ticket is borne by it, and therefore, over years, it offered only 80% of the face value of the tickets as income, and accordingly, no tax was payable, was an aspect, which had to be taken note of in the impugned orders. In other words, the prima facie tenability of the additions had to be examined.

7.1 Furthermore, before me, the counsel for the petitioner submits that the petitioner has very little liquid income as huge amounts are required to be paid towards salary, provident fund and fuel, etc., to run its operations. These are factors, which the Revenue should have kept in mind while passing the impugned order.

7.2. Moreover, given the fact that the petitioner is a State Government Undertaking, which has sufficient assets in the form of immovable property was also an aspect which required consideration, prior to imposing the impugned condition on the petitioner.

7.3. What is even more disconcerting is the fact that the Revenue hastily proceeded to attach the bank accounts of the petitioner. The communication dated 02.12.2016, issued to the State Bank of India by the Revenue, which is appended in page-123 of the typed set of document, exemplifies this fact.

8.Therefore, having regard to the aforesaid fact and circumstances, the order dated 24.11.2016, is set aside. As a result of which, four separate orders of even date, i.e., 23.05.2016 in respect of respective assessment years, which are appended at pages-111 to 114 of the typed set of documents, and the order dated 26.09.2016, which is appended at page-118 of the typed set of documents, will also fall by the wayside.

8.1. The Revenue will, once again, consider the application for stay preferred by the petitioner. While considering the application, the Revenue will, *inter alia,* consider the factors adverted to above.

8.2 Needless to say that the Revenue can also explore the option of, instead, hearing the appeal finally.

9. Accordingly, with the aforesaid directions in place, the writ petition is closed.

10.In these circumstances, quite logically, the order issued on 02.12.2016, attaching the bank account of the petitioner will get lifted. There shall, however, be no order as to costs.

11. Consequently, the connected miscellaneous petitions are also closed.

Index : Yes/No 07.12.2016
Internet : Yes
Note : Issue order copy on 08.12.2016
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To

1. The Chief Commissioner of Income Tax-4,
   Aayakkar Bhavan – 121,
   Mahatma Gandhi Road, Chennai – 600 034.

2. The Deputy Commissioner of Income Tax,
   Villupuram Circle-I,
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RAJIV SHAKDHER,J.

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