IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.19315 of 2015

M/s Devi Karumariamman Educational Trust
rep.by its Trustee Mr.J.Kumaran
Son of G.Jayaraman
No.5, Chellammal Complex, Arcot Road
Janaki Nagar
Valasaravakkam
Chennai 600 087 .. Petitioner

-vs-

1. Deputy Commissioner of Income Tax (Exemptions)-I
Chennai Circle
Annexe Building, 3rd Floor
121, M.G.Road
Chennai 600 034

2. Commissioner of Income Tax (Appeals)-17
121, Nungambakkam High Court
Chennai 600 034 .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records in PAN: AABTS7096K/2015-16 dated 19.06.2015 relating to assessment year 2009-10 on the file of the first respondent and quash the same and further forbearing the first respondent from initiating or continuing with any proceedings for recovery of the disputed demand pursuant to the order of assessment in PAN:AABTS7096K dated 31.03.2015 relating to assessment year 2009-10 passed by the first respondent.

For Petitioner	::	Dr.Anita Sumanth
For Respondents	::	Mr.T.Pramod Kumar Chopda Senior Standing Counsel

ORDER

This writ petition has been filed challenging the correctness of the order dated 19.6.2015 passed by the Deputy Commissioner of Income Tax (Exemptions)-I, Chennai Circle, the first respondent herein in PAN No. AABTS7096K/2015-16, in and by which the assessing officer has turned down the request for grant of absolute stay on the recovery proceedings initiated by him.

2. Attacking the conclusions reached by the assessing officer in the impugned order, Dr.Anita Sumanth, learned counsel for the petitioner submitted that the petitioner, being a charitable trust engaged in various charitable activities, has filed the return for the assessment year 2009-10 on 30.9.2009 claiming 'Nil' income. After processing the same under Section 143(3) of the Income Tax Act by making various additions or disallowances, an assessment order was passed against the petitioner. The same was contested before the Commissioner of Income Tax (Appeals) and subsequently before the Income Tax Appellate Tribunal on the issue of claim of corpus donations received during the previous years i.e., pertaining to assessment years 1999-2000 to 2002-2003 and on the claim of depreciation on fixed assets. Finally the Income Tax Appellate Tribunal remanded the appeal back to the file of the assessing officer for de novo adjudication. Again the assessing officer has concluded the case rejecting the

claim of corpus donations under Section 11(1)(d) of the Income Tax Act, resultantly, he further proceeded to disallow the claim of depreciation on fixed assets. Having been aggrieved by the assessment order, the petitioner preferred an appeal before the Commissioner of Income Tax (Appeals), Chennai. In the meanwhile, subsequent to the order of assessment, recovery proceedings were initiated, therefore, the petitioner was constrained to move a stay application under Section 220(6) of the Income Tax Act for grant of absolute stay of the demand, taking a stand that the claim of depreciation is squarely covered by the judgments of various High Courts including the jurisdictional High Court in the case of Commissioner of Income Tax v. Rao Bahadur Calawala Cunnan Chetty Charities reported in 135 ITR 485 along with the strength of the circular of the Central Board of Direct Taxes in F.No.404/10/2009-ITC dated 1.12.2009 affirming Instruction No.1914 dated 2.12.1993, but the first respondent-assessing officer, by his order dated 19.6.2015, declined to consider the request. Hence, the matter has been brought to this Court.

3. Although various submissions have been placed before this Court, Dr.Anita Sumanth, learned counsel for the petitioner brought to the notice of this Court the Instruction No.1914 dated 2.12.1993 issued by the Central Board of Direct Taxes to impress upon this Court that the guidelines for staying demand have been completely overlooked by the assessing officer. She has also further

pleaded with this Court that when the guidelines are very clear and explicit that a demand will be stayed only if there are valid reasons for doing so, more particularly, if the demand in dispute relates to issues that have been decided in assessee's favour by an appellate authority or Court earlier, the assessing officer, in all fairness, ought to have considered the stay application in favour of the petitioner, in the light of the ratio laid down by this Court in the case of Commissioner of Income Tax v. Rao Bahadur Calawala Cunnan Chetty Charities reported in 135 ITR 485. But ignoring the ratio laid down by the jurisdictional High Court along with the decisions of the jurisdictional Tribunal in G.K.R.Charities v. Deputy Director of Income Tax (Exemptions) reported in 51 SOT 538 and in Joint Commissioner of Income Tax v. Bhaktavatsalam Memorial Trust reported in 30 ITR 264, referring to the decisions of the Kerala High Court in the case of Lissie Medical Institutions v. Commissioner of Income Tax, 348 ITR 344; of the Delhi High Court in the case of Director of Income Tax (Exemptions) v. Charanjiv Charitable Trust, 43 Taxman.com 300 and in Deputy Director of Income Tax (Exemptions) v. Adi Sankara Trust, 46 SOT 230 (Cochin), erroneously refused to grant absolute stay. Although the assessing officer has directed the petitioner to pay 50% of the demand in ten installments starting from June, 2015 at the rate of Rs.1,84,800/- per month and submit the copy of challan thereof to the office on or before 30th of that month for stay of the balance demand of Rs.18,47,190/-, the petitioner is put to great hardship, for the reason that when this Court has decided the matter giving a quietus to the issue that the assessee is entitled to claim depreciation for the assessment year 2009-10, the conditional order passed by the assessing officer is liable to go.

4. Per contra, Mr.T.Pramod Kumar Chopda, learned senior standing counsel for the respondents has heavily contended that the petitioner cannot be allowed to say that the assessing officer has refused to consider the assessee's request for grant of absolute stay, taking into account that the petitioner is not in dearth of revenue, has passed a reasonable order directing to pay 50% of the demand in ten installments starting from June, 2015 at the rate of Rs.1,84,800/- per month and subject to the compliance of the said condition, it was also indicated in the order that the balance demand of Rs.18,47,190/- would be stayed till the disposal of the appeal before the Commissioner of Income Tax (Appeals), therefore, the petitioner cannot maintain the writ petition. He has also further submitted that when the petitioner has taken support of the decision of this Court in the case of Commissioner of Income Tax v. Rao Bahadur Calawala Cunnan Chetty Charities reported in 135 ITR 485 along with the decisions of the jurisdictional Tribunal in G.K.R.Charities v. Deputy Director of Income Tax (Exemptions) reported in 51 SOT 538 and in Joint Commissioner of Income Tax v. Bhaktavatsalam Memorial Trust reported in 30 ITR 264, the assessing officer, being aware of the judgments passed by various High Courts, has come to the

conclusion that there is a serious dispute on the issue whether the assessee is entitled to the depreciation claim for the assessment year 2009-10, therefore, no fault can be found with the assessing officer.

5. The circular issued by the Central Board of Direct Taxes in File No.404/10/2009-ITCC dated 1.12.2009 affirming Instruction No.1914 dated 2.12.93 clearly enlightens the duty, responsibility and the guidelines cast on the assessing officer for staying demand. In this context, it is appropriate to extract the relevant portions of the Instruction No.1914 dated 2.12.93, as follows:-

> "A. Responsibility
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> (i) It shall be the responsibility of the Assessing Officers and the TRO to collect every demand that has been raised, except the following:
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> (a) Demand which has not fallen due;
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> (b) Demand which has been stayed by a Court or ITAT or Settlement Commission;
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> (c) Demand for which a proper proposal for write off has been submitted;
>
> (d) Demand stayed in accordance with paras B & C below.
>
> .....
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> B. Stay petitions
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> (i) Stay petitions filed with the Assessing Officers must be disposed of within two weeks of the filing of

petition by the taxpayer. The assessee must be intimated of the decision without delay.

(ii) Where stay petitions are made to the authorities higher than the Assessing Officer (DC/CIT/CC), it is the responsibility of the higher authorities to dispose of the petitions without any delay, and in any event within two weeks of the receipt of the petition. Such a decision should be communicated to the assessee and the Assessing Officer immediately.

(iii) The decision in the matter of stay of demand should normally be taken by Assessing Officer/TRO and his immediate superior. A higher superior authority should interfere with the decision of the AO/TRO only in exceptional circumstances e.g. where the assessment order appears to be unreasonably highpitched or where genuine hardship is likely to be caused to the assesee. The higher authorities should discourage the assessee from filing review petitions before them as a matter of routine or in a frivolous manner to gain time for withholding payment of taxes.

C. Guidelines for staying demand

(i) A demand will be stayed only if there are valid reasons for doing so. Mere filing an appeal against the assessment order will not be sufficient reason to stay the recovery of demand. A few illustrative situations where stay could be granted are--

> (a) If the demand in dispute relates to issues that have been decided in assessee's favour by an appellate authority or Court earlier; or
> (b) if the demand in dispute has arisen because the Assessing Officer had adopted an interpretation of law in respect of which there exist conflicting decisions of one or more High Courts (not of the High Court under whose jurisdiction the Assessing Officer is working); or
> (c) If the High Court having jurisdiction has adopted a contrary interpretation but the Department has not accepted that judgment.
> ....."

6. In the case on hand, this Court, after hearing the learned counsel on either side, keeping in mind the ratio of this Court in the case of Commissioner of Income Tax v. Rao Bahadur Calawala Cunnan Chetty Charities reported in 135 ITR 485 read with the aforesaid circular of the Central Board of Direct Taxes in F.No.404/10/2009-ITC dated 1.12.2009 affirming Instruction No.1914 dated 2.12.1993, is of the considered view that when the issue whether the assessee is entitled to the depreciation claim for the assessment year 2009-10 has been decided by this Court, as I have already held by order dated 5.6.2015 in W.P.No.15959 of 2015 dated 5.6.2015 (M/s Kalapet Primary Agricultural Credit Cooperative Society, Pondicherry v. The Income Tax Officer) that all authorities, civil, criminal and judicial, coming within the territory of the High Court, shall act

in the aid of the High Court, hence, the assessing officer is bound by the order passed by the jurisdictional High Court without taking any stand that the High Courts of other States are taking a different view, I have no other option except to set aside the impugned order, for the simple reason that the appeal is pending for consideration. Accordingly, the impugned order is set aside. It is open to the second respondent-Commissioner of Income Tax (Appeals)-17, Chennai, the appellate authority to expedite the hearing of the pending appeal and dispose of the same on merits and in accordance with law at the earliest possible time. Needless to mention that the observations made in this order shall not be carried away by the appellate authority for consideration of the appeal on merits. The writ petition stands allowed. Consequently, M.P.No.1 of 2015 is closed. No costs.

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To

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T.RAJA, J.

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