

Court No. - 32

Case :- WRIT TAX No. - 477 of 2015

Petitioner :- Jalan Jee Polytex Ltd.

Respondent :- Asstt. Commissioner Of Income Tax And Another

Counsel for Petitioner :- Abhinav Mehrotra

Counsel for Respondent :- C.S.C., It

Hon'ble V.K. Shukla,J.

Hon'ble Pratyush Kumar,J.

Jalan Jee Polytex Ltd. is before this Court with following prayer;

1. to issue a writ, order or direction in the nature of certiorariy to quash the impugned order dated 8.5.2015 and to further direct the respondent no. 1 to rehear the issue and pass appropriate orders after obtaining all relevant information and considering the submissions made and after giving due and proper opportunity of hearing to the petitioner by means of a speaking, legal and valid order.
2. to issue a writ, order or direction in the nature of mandamus to the Asst. Commissioner of Income Tax, Central Circle, Varanasi, being respondent no. 1, with a direction, to not resort to any coercive methods of recovery of disputed tax demand and in case of any such measures, already adopted, the same be rescinded or revoked.
3. to issue a writ, order or direction in the nature of mandamus to the Commissioner of Income Tax (Appeals) - III, Lucknow, being respondent no. 2, with a direction, to expedite the hearing of the Income Tax Appeal and Stay Petition of the Petitioner/Assessee in the matter, pending which the demanded tax be kept in abeyance as per the provisions of Section 220 (6).
4. to issue a writ, order or direction in the nature of mandamus to stay the operation of Notice of Demand u/s 156 of the Act, during the determination of the correct income of the assessee by the Commissioner of Income Tax (Appeals) - III.
5. to pass any such other or further order which this august court may consider appropriate in the facts and circumstances of the case.

The respondent no. 1 has taken up the proceedings for the assessment of income of the petitioner/assessee for the A.Y. 2005-06 by issuing of notice u/s 153 A of the Income Tax Act 1961 and an order or assessment was made. This order of assessment was thereafter set-aside by the Commissioner of Income Tax (Central), in favour of the petitioner/assessee, with a direction to the respondent no. 1 for fresh orders of assessment being made. The assessment finally came to be made by virtue of order of assessment passed in the March of 2015. The demand of tax, so raised, was prayed by the petitioner/assessee to be kept in abeyance, in view of the provisions of Section 220 (6) of the Income Tax Act, till the disposal of the Income Tax Appeal by the respondent no. 2, being the Commissioner of Income Tax (Appeals), Lucknow, before whom the matter is sub-judice. The request of the petitioner

u/s 220 (6) of the Income Tax Act was rejected by means of the impugned order dated 8.5.2015, signed by the respondent no. 1 on 11.5.2015 and received by the petitioner/assessee on 16/17.5.2015 and against this action petitioner is before this Court.

On the matter being taken up today Shri Abhinav Mehrotra, learned counsel for the petitioner, submitted with vehemence that in the present case the authority conferred has not at all been properly exercised and there is gross failure in exercising the authority whereas in the interest of justice requisite relief, as has been claimed for, ought to have been allowed.

The request that has been made on behalf of petitioner has been resisted by Shri Ashok Kumar, Advocate, by contending that before the appellate forum petitioner is not at all cooperating and are buying time and, in view of this background, the request in question, that has been so made, as it has no substance, has rightly been turned down.

After respective arguments have been advanced the factual situation that is so emerging in the present case is that Assistant Commissioner of Income Tax has made assessment order for the assessment year 2005-06 in March 2015 and against the said order in question petitioner has preferred appeal and has also moved stay application and in between petitioner/assessee has moved the application u/s 220 (6) of the Income Tax Act for keeping in abeyance the recovery proceedings till the disposal of the income tax appeal by respondent no. 2. The said application in question made before the Assistant Commissioner of Income Tax, Central Circle, Varanasi, proceeds to make a mention that appeal has been filed before the Commissioner of Income Tax (Appeals), Lucknow, alongwith a petition for stay of demanded tax and alongwith the same copy of grounds of appeal filed have been attached and in this background request has been made that assessee be not treated as defaulter under the provisions of Section 220 (6) and the assessee has a good prima facie case in its favour, the balance of convenience also lies in favour of the assessee and against the revenue, accordingly, the relief in question be accorded. The authority concerned has considered such an application dated 30.4.2015 and has proceeded to make a mention that the grounds that have been put forth for considering the request for stay of demand are not acceptable merely on the ground that decision of the appeal is pending, accordingly, request for stay of demand cannot be conceded and assessee has been directed to deposit the demand at the earliest failing which coercive measures including attachment of bank accounts under Section 226 (3) of the Income Tax Act would be taken.

The fact of the matter is that but for pendency of appeal and moving of stay application and the grounds nothing more has been substantiated in the application dated 30.4.2015 and, in view of this, once no ground whatsoever has been made out to justify the request then it cannot be said that the order, that has been so passed, suffers from any infirmity.

The Powers of Assessing Officer under Section 220 (6) of the Act, cannot be said to be power to grant stay against the recovery of disputed demand. The said provisions gives discretion to the Assessing Authority, not to treat the assessee in default subject to such conditions as he may think fit, to impose in the circumstances of the case, so long as such appeal filed under Section 246

or 246A of the Act is pending, so as to save the assessee from the consequences, which would otherwise follow, if the assessee is to be treated as 'assessee in default', namely, payment of interest under Section 220(2) and penalty under Section 221 of the Act. Mere filing of appeal does not suo-moto stay the recovery proceedings and on presentation of appeal under Section 246 of Section 246 A, the Assessing Officer is empowered to exercise his discretion, subject to conditions as he may think fit to impose in the circumstances of case, for treating the assessee as not being in default in respect of amount in dispute in appeal, even though the time for payment has expired, as long as such appeal remains disposed of. The provision on its face value is to protect the interest of assessee but for the discretion being exercised in favour of assessee, he will have to make out a case by furnishing details such as **(i)** Assessment history of the case **(ii)** His conduct and cooperation with the Department **(iii)** Points raised in Appeal **(iv)** chances of recovery in the event of dismissal of Appeal **(v)** the hardship that would be caused by persistent demand of Department **(vi)** any other relevant circumstances. On such details being furnished, in the light of CBDT circulars holding the field, then Assessing Officer would exercise his discretion. Here the application in question lacked necessary material particulars, as such, there is no infirmity in decision, so taken, in view of this, as far as this Court is concerned, this Court is not at all interfering with the order impugned but certainly as petitioner has already moved Appeal in question alongwith the stay application, we proceed to ask the Appellate Forum to decide the stay application of petitioner/assessee, in accordance with law, within a period of one month from the date of receipt of certified copy of this order and, thereafter, all attempt and endeavor should be made to decide the appeal in question, subject to convenience/roster and statutory provisions holding the field for decision of Appeal by the Appellate Forum.

We also make it clear that passing of this order would not at all come in the way of petitioner to move fresh application under Section 220 (6) with necessary material particulars.

With these observations/directions, writ petition stands disposed of.

Order Date :- 12.6.2015

Shekhar