IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2014

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THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

W.P.No.28202 of 2014
and
M.P.No.1 of 2014

M/s.Viswakarma Mines & Building
Materials Pvt. Ltd.,
New No.216, Old No.65,
Shriram Bhavanam,
Alwarpet Street,
Alwarpet,
Chennai – 600 018.
Rep. By its Director, Sri.S.Ganesan
Son of Sivasankara Nadar ... Petitioner

Vs.

1. The Deputy Commissioner of Income-Tax,
Central Circle-III (1) (i/c.)
46, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034.

2. The Commissioner of Income-Tax (Appeals),
121, Nungambakkam High Road,
Chennai – 600 034. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of writ of certiorarified mandamus, to call for the records in F.No.C.C.III (1)/2014-15/AACCV4607L dated 08.10.2014 on the file of the 1st respondent and quash the same and further forbearing the 1st respondent from initiating or continuing with any proceedings for recovery of the disputed demands pursuant to the orders of assessment in PAN No.AACCV4607L dated 31.03.2014 relating to Assessment Years 2008-09 to 2012-13 passed by him.

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

ORDER

The petitioner seeks for the issuance of writ of certiorarified mandamus, to quash the proceedings of the first respondent dated 08.10.2014 and to forbear the 1st respondent from initiating any proceedings for recovery of the disputed demands pursuant to the orders of assessment dated 31.03.2014 relating to Assessment Years 2008-09 to 2012-13.

2. The petitioner is a Company incorporated under the Indian Companies Act,1956 and Assessee under the provisions of the Income Tax Act, 1961.

3. For the purpose of disposal of the writ petition, it may not be necessary to go into the entire material factual matrix of the case as set out in the affidavit filed in support of the writ petition, it would suffice to note the

following facts.

3.1. As against the orders of assessment dated 31.03.2014 relating to Assessment Years 2008-09 to 2012-13, the petitioner has preferred appeals on 30.04.2014 before the Deputy Commissioner of Income Tax and the appeals are pending.

4. This fact is not disputed by the learned Standing Counsel for the respondent and on instruction, he stated that the appeals are pending. After filing of the appeals, the petitioner filed a petition for stay under Section 220(6) of the Act on 05.05.2014. In the stay petition, the petitioner raised several grounds on the merits of the assessment orders and as to how the petitioner has a prima facie case for grant of stay and that the balance of convenience is in their favour for stay of recovery.

5. In the stay petition, the petitioner sought for stay of collection of tax pursuant to the orders of the assessment for the relevant assessment years; not treat the petitioner as an Assessee in default; post the petition for early disposal and afford an opportunity of personal hearing. While the petition was pending, by impugned proceedings, the petitioner was informed that as per the

records, there is a demand of Rs.270.39 lakhs outstanding for various assessment years and the petitioner was called upon to pay the same on or before 16.10.2014 and in case, the petitioner has already deposited the amount, the petitioner was advised to present before the respondent and produced the relevant challan and if not, the petitioner was directed to take the impugned communication as final notice and the Department will not initiate coercive measures, if there is no compliance. Challenging the proceedings dated 08.10.2014, the petitioner has approached this Court submitting that the respondent is not justified in issuing the impugned communication when the petition for stay is pending before the authority, where several grounds were raised by the petitioner.

6. In order to ascertain as to whether any order has been passed on the stay petition filed by the petitioner, this Court directed the learned Standing Counsel to get instructions, by order dated 29.10.2014 and posted the matter today, i.e. on 30.10.2014.

7. The learned Standing Counsel appearing for the respondents, on instructions, would submit that the stay petition is still pending and the authority will pass an order on the petition.

8. It is to be noted that when the petitioner/Assessee has filed appeals before the appellate authority and filed the stay petition raising several contentions and when there is a statutory provision for filing a stay petition under Section 220(6) of the Act, the appellate authority is expected to consider the stay petition and pass a reasoned order after hearing the parties. In fact, the petitioner has specifically sought for an opportunity of personal hearing. While so, the respondent is not justified in calling upon the petitioner to pay the demand for various assessment years.

9. In the light of the stand taken by the respondents/Department stating that orders would be passed in the stay petition, the writ petition is allowed and the impugned orders of the first respondent dated 31.3.2014 and 08.10.2014 are quashed. The respondents are directed to consider the petitioner's stay petition filed under Section 220(6) of the Act, on 05.05.2014 and afford an opportunity of personal hearing and pass a reasoned order on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

30.10.2014

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T.S.SIVAGNANAM, J.

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To

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