IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.9.2014

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THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN

Writ Petition No.25682 of 2014

M/s. Sooriya Hospital
rep. by its Managing Partner Dr.CP Sreekumar
No.1, Arunachalam Road
Saligramam
Chennai 600 093. .. Petitioner

Vs.

1. The Commissioner of Income Tax - Appeals (V)
Aayakar Bhavan, 2nd Floor, Main Building
121 MG Road, Nungambakkam
Chennai 600 034.

2. The Assistant Commissioner of Income Tax
Circle V, Annexe Building
6th Floor, Room No.606, 121 MG Road
Nungambakkam, Chennai 600 034. .. Respondents

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Petition under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus to quash the order of the first respondent in ITA No.124(SP)/14-15(A)-V dated 15.9.2014 and consequently, to direct the respondents or any of their subordinates, agents or any other person claiming under the respondents from in any manner seeking to enforce the second respondent's demand of Rs.2,65,86,680/- for the assessment year 2011-12 pending disposal of the first appeal on the file of the first respondent.

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For Petitioner : Mr.Suhrith Parthasarathy
For Respondents : Mr.T.Pramod Kumar Chopda

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**O R D E R**

The petitioner has come up with the above writ petition challenging the imposition of condition by the Appellate Commissioner for the grant of stay of an order of assessment.

2. Heard Mr.Suhrith Parthasarathy, learned counsel for the petitioner and Mr.Pramod Kumar Chopda, learned Standing Counsel for the respondents.

3. The demand made as per the order of assessment is Rs.2,65,86,680/-. The petitioner has been asked to deposit 50% of the said amount by the order impugned in the writ petition.

4. Apart from the reliance placed upon the Instruction No.96 and Instruction No.1914/93 dated 02.12.1993 and the decision of the Division Bench and the Delhi High Court in ***Taneja Developers and Infrastructure Ltd. v. Assistant Commissioner of Income Tax [(2010) 324 ITR 247 (Delhi)]***, the learned counsel for the petitioner also states that the petitioner is due to get a refund of nearly Rs.1.00 Crore. However, it is stated by Mr.T.Pramod Kumar Chopda, learned Standing Counsel for the Department that the amount of refund due from the Department to the petitioner is about Rs.60.00 Lakhs.

5. Once it is admitted that at least 25% of the demand now made by the Department, is already with them in the form of an amount due by way of refund, the imposition of the condition does not appear to be proper. The

fact that a refund of at least 25% of the total amount now demanded is due to the petitioner has not been taken note of by the respondents.

6. Therefore, the writ petition is allowed and the condition imposed in the impugned order for payment of 50% of the demand is set aside. However, till the appeal is disposed of, the petitioner shall not claim refund of the amount lying with them. No costs. Consequently, M.P.No.1 of 2014 is closed.

Index : Yes/No 24.9.2014.
Internet : Yes/No

**Note to Office:**
Issue order copy on 25.9.2014.

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To

1. The Commissioner of Income Tax - Appeals (V)
   Aayakar Bhavan
   2nd Floor, Main Building
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**V.RAMASUBRAMANIAN,J.**

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W.P.No.25682 of 2014.

24.9.2014.