

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25 -- 04 -- 2012

CORAM

The Hon'ble Mr.Justice Vinod K.Sharma

Writ Petition Nos.6608 & 6609 of 2012

and

M.P.Nos.1 & 2 of 2012

M/s. Sivanandha Mills Ltd.,
rep., by its Managing Director,
Mr.P.Murugesan

... Petitioner in both the Writ Petitions

Vs.

1.The Assistant Commissioner of Income Tax,
O/o the Assistant Commissioner of Income Tax,
Company Circle IV (2)
No.63, Race Course Road,
Coimbatore 641 018.

2.The Commissioner of Income Tax (Appeals) -I
Income Tax Office,
No.63, Race Course Road,
Coimbatore 641 018.

3.The Commissioner of Income Tax II
O/o the Commissioner of Income Tax -II
No.63, Race Course Road,
Coimbatore 641 018.

... Respondents

Prayer in Writ Petition.Nos.6608 of 2012:-

Writ Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus, to call for the records, in notices under Section 226(3) of the Income Tax Act in PAN No.AAKCS7439J/2009-10, dated 06.03.2012,on the file of the first respondent herein and to quash the same and to direct the second respondent to dispose of the application dated 12.3.2012, filed by the Assessee under Section 220 (6) of Income Tax Act, 1961, seeking non enforcement of demand pending disposal of Appeal pending before the second respondent.

Prayer in Writ Petition No.6609 of 2012:-

Writ Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari, to call for the records, in notice of demand under Section 156 of the Income Tax Act in PAN No.AAKCS7439J/2009-10, dated 31.12.2011, and to quash the same.

For Petitioner : Mr.K.Ravi
For Respondents : Mr.Arun Kumar Joseph
for Mr.J.Narayanaswamy

COMMON O R D E R

This judgment shall dispose of the following Writ Petitions, viz., :-

Sl.No.	Case No.	Name of the petitioner
1	W.P.No.6608/ 2012	M/s. Sivanandha Mills Ltd., rep., by its Managing Director, Mr.P.Murugesan

2 W.P.No.6609 of 2012 "

1. As the common question of facts are involved in both the Writ Petition, however, for the sake of brevity, facts are being taken from W.P.No.6608 of 2012.

2. The petitioner is a Company, registered under the Companies Act and has approached this Court, with a prayer for issuance of a Writ, in the nature of Certiorari, to quash the order of attachment of Bank Accounts, issued under Section 226 (3) of the Income Tax Act, 1961, (hereinafter referred to as 'the Act') for non clearance of demand under Section 156 of the Act.

3. The Company run by the petitioner was not in operation for about 18 years, due to the lock out. The Management of the petitioner, therefore, took steps to revive the Company and its business.

4. In the dispute between the Management and the labours, this Court, directed the petitioner/Company to dispose of 14.68 acres of land, being surplus available with the petitioner, to discharge the liability of the labours.

5. The sale proceeds received from sale were used to meet the liability of the labours and to discharge of dues of the Bank.

6. The petitioner/Company filed return of income, on 30th March, 2011, showing the income at Rs.10,28,03,164/- (Rupees Ten Crores Twenty Eight Lakhs Three Thousand One Hundred and Sixty Four only). This was the income shown on account of profit of the sale of the land, after deducting the commission paid for sale as well as the expenses incurred by the petitioner/Company to perfect the title of the property.

7. The income was assessed under the provisions of the Income Tax Act, the Income Tax Officer, disallowed the cost incurred to perfect the title and the commission paid for sale and raised a demand of Rs. 10,77,71,300/- (Rupees Ten Crores Seventy Seven Lakhs Seventy one Thousand and Three hundred only).

8. The petitioner/Company, being aggrieved by the Assessment Order, preferred a Statutory Appeal with the Commissioner of Income Tax (Appeals)-I, primarily, on the ground that the Assessment Order is contrary to the settled Law that assessee is entitled to deduct the cost incurred to perfect the title of the property, and commission paid for the sale out of the capital gain.

9. Along with the Statutory Appeal, the petitioner/Company has also filed an Application for Stay of the demand.

10. The contentions of the learned counsel for the petitioner is that, the respondent No.2 has failed to take any decision on the Appeal, as it is yet to be listed for hearing. The respondent/Department, taking advantage of the fact, that the application for Stay is not heard, proceeded to attach the accounts of the petitioner/Company, on the plea of protecting the interest of the Revenue.

11. The petitioner, being aggrieved by the order of attachment, approached the Income Tax Officer, for Stay of the recovery proceedings, due to the pendency of the Appeal, by declaring the petitioner as Assessee not in default. The Income Tax Officer, passed a conditional order, directing the petitioner/Company to deposit part of the demanded amount.

12. On the petitioner's failure to comply with the conditional order, the Income Tax Officer rejected the Stay Application.

13. The order of the Income Tax Officer, is challenged being *prima facie* contrary to the settled Law, that assessee is entitled to deduct the amount incurred to perfect the title of the property, and also the commission paid for the sale.

14. The only grievance of the petitioner in this case is, though the petitioner has *prima facie* case against the demand, but, his Appeal or Application for Stay is not being heard by the respondent No.2, which has resulted in great hardship to the petitioner, due to the attachment of the accounts of the petitioner/Company, which is affecting its commercial activity.

15. The learned counsel for the petitioner contends that, once the Statutory Appeal is filed by the petitioner/Company, he is entitled to the grant of Stay of demand, and also for setting aside of the attachment order.

16. The Writ Petition is opposed by the learned counsel for the respondents, contending that the Writ Petition is a premature, as the Statutory Appeal filed by the petitioner/Company is admittedly, pending with the respondent No.2. Therefore, once the petitioner has approached

the Appellate Authority for the stay, it is not open to the petitioner/Company to have parallel proceedings, i.e, one before the Appellate Authority, and other before this Court.

17. The learned counsel for the petitioner controverts this stand of the learned counsel for the respondents, by contending that, all consequential orders, give independent right to the petitioner, to challenge the said orders. Therefore, this Writ Petition cannot be said to be parallel proceedings.

18. Keeping in view of the facts and circumstances of the case, specially the fact that the Appeal along with the Stay Application is pending disposal with respondent No.2, the Writ Petitions are disposed of, at this stage, with a direction to the respondent No.2, to dispose of the Stay Application filed by the petitioner/Company, expeditiously, and in any case, within a period of seven days on appearance of the parties before him.

19. The parties and the Counsel are directed to appear before the respondent No.2, on 2nd May, 2012, at 10.a.m.,

20. It is made clear that the respondent No.2, shall not adjourn the case beyond seven days, and that the Stay Application should be positively decided within seven days of appearance as directed.

21. No costs. Consequently, connected miscellaneous petitions are closed.

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To

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