

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2012

CORAM:

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

W.P.NO.25504 OF 2004

AND W.P.M.P.NO.30992 OF 2004

M/s.Caplin Point Laboratories limited,
86,Bazullah Road,
T.Nagar, Chennai 600 017,
represented by its Director,
S.Karunakaran.

..... Petitioner

Vs.

1.The Deputy Commissioner of Income-tax,
Company Circle-I(3),
121, N.H.Road, Chennai 600 034,

2.The Tax Recovery Officer,
Company Circle-I,
121, N.H.Road, Chennai 600 034,

3.The Manager,
Catholic Syrian Bank Limited,
Mount Road Branch,
Chennai,

4.M/s.May India Laboratories Pvt.Ltd.,
3, Lakshman Street, T.Nagar,
Chennai 6000 017,

5.Income Tax Appellate Tribunal,
A3/II Floor, 'Rajaji Bhavan',
Besant Nagar, Chennai 600 090.

... Respondents.

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking the relief of issuance of writ of mandamus to forbear the 1st and 2nd respondents from initiating and or continuing any recovery proceedings for recovery of the disputed demand relating to the assessment year 1995-96 in respect of which an appeal and stay petition are pending before

the 5th respondent, pending disposal of the said appeal and the petition for stay by the said respondent.

For Petitioner : Ms.Anita Sumanth

For Respondents: Mr.J.Narayanaswamy
Jr.Standing Counsel for
Income-tax.

ORDER

The Writ Petition is filed seeking the relief of issuance of writ of mandamus to forbear the 1st and 2nd respondents from initiating and or continuing any recovery proceedings for recovery of the disputed demand relating to the assessment year 1995-96 in respect of which an appeal and stay petition are pending before the 5th respondent, pending disposal of the said appeal and the petition for stay by the said respondent.

2. The petitioner is engaged in the manufacture and sale of pharmaceutical products. Relevant assessment year is 1995-96 and the corresponding accounting year ended on 31.3.1995. The petitioner/ assessee filed his return of income on 28.11.1995 admitting total income of Rs.2,57,270/- after claiming deduction under Section 80HHC and 80I of Rs.1,76,116 and Rs.1,44,463/- respectively. The said assessment was processed under Section 143(1)(a) of the Income-tax Act. Subsequently, the assessing officer issued a notice under Section 148 on 18.2.2000 for reopening the assessment. Objecting the same, the petitioner also filed a letter dated 9.3.2000. The assessing officer completed the assessment under Section 143 read with Section 147 and determined the total income at Rs.5,77,850/-. While completing the assessment, the assessing officer disallowed the claim of deduction under Section 80HHC and 80I. Aggrieved by that, the assessee filed an appeal before the Commissioner of Income-tax (Appeals) and the Commissioner of Income-tax (Appeals) dismissed the appeal confirming the order of assessment. Aggrieved by that, the assessee filed an appeal before the Income-tax Appellate Tribunal and the same is still pending. When the Commissioner of Income-tax (Appeals) dismissed the appeal, the revenue initiated recovery proceedings by way of issuing garnishee order under Section 226(3) of the Income-tax Act. Aggrieved by that, the petitioner/assessee filed present writ petition challenging the garnishee order.

3. Learned counsel for the petitioner vehemently contended that aggrieved by the order of the Commissioner of Income-tax (Appeals) the petitioner preferred an appeal before the Income-tax Appellate Tribunal and the chance of petitioner's success before the Tribunal is very bright and further it is stated that the assessing officer as well as the first appellate authority wrongly denied the benefit of Section 80HHC of the Income-tax Act. The passing of garnishee order is wrong, illegal, without any basis and justification.

4. Learned counsel appearing for the respondents 1 and 2 contended that the revenue has correctly followed the procedure as prescribed under the statute and correctly initiated recovery proceedings by issuing garnishee order. Learned counsel further submits that the stay petition preferred by the petitioner before the Tribunal was also dismissed and so the garnishee order passed by the revenue is in accordance with law and the same should be confirmed.

5. Heard the learned counsel appearing on either side and perused the material documents on record.

6. It is pertinent to note that the petitioner/assessee filed appeal before the Income-tax Appellate Tribunal against the order passed by the Commissioner of Income-tax (Appeals) as early as 2003 and the same is still pending. Now it is also very relevant to note that as per the letter of the Assistant Commissioner of Income-tax, Company Circle-i(3), Chennai, dated 18.4.2012 in PAN.No.AABCC2667F/1995-96 addressed to the learned counsel for respondent, the total demand is Rs.60,64,793/-. Out of the said sum, only Rs.5,00,760/- is due towards tax component and the balance amount relates to the interest levied under section 220(2) of the Income-tax Act and the assessee also already paid a sum of Rs.52,33,773/- towards the tax and credit was also given by the revenue. Against the levy of interest under Section 220 of the income-tax Act, the petitioner can also file waiver petition before the concerned Commissioner of Income-tax under Section 220(2) of the Act.

7. Taking into consideration of the above facts and circumstances, the impugned garnishee order passed by the 2nd respondent Tax Recovery Officer dated 1.9.2004 and the attachment notice are set aside and the 5th respondent Income-tax Appellate Tribunal is directed to take up the appeal relating to the petitioner in I.T.A.No.222/Mds/2003, consider the same after giving opportunity to the petitioner to substantiate his case and pass orders in accordance with law as expeditiously as possible, preferably within a period of six weeks from the date of receipt of copy of this order.

8. With this observation, the writ petition is disposed of. However, there is no order as to costs. Consequently, the connected miscellaneous petition is closed.

19.04.2012

Index:Yes/No

Internet:Yes/No

Copy to:

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