IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	21.01.2020
Pronounced On	11.02.2020

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.No.16463 of 2016
and
W.M.P.No.14227 of 2016

CBI International
A Partnership firm
Represented by its Managing Partnership
Mr.G.Sakthivel,
No.92/4, Angeripalayam Road,
Opp. Bishop School, Tirupur – 641 603. ... Petitioner

Vs.

The Income Tax officer
Ward I (2),
No. 121, 60, feet Road,
Tirupur – 641 602. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the files of the respondent and quash the impugned proceedings of the respondent in PAN.No. AACFC0906D dated 03.02.2016 and consequentially quash the proceedings of the respondent in W-I(2) / Tpr/2015-16 dated 28.03.2016 for the assessment year 2010-11.

For Petitioner : Mr.R.Sivaraman

For Respondent : Mr.A.P.Srinivas
Senior Standing Counsel.

O R D E R

The petitioner has impugned order dated 03.02.2016 in PAN.No.AACFC0906D and consequential order dated 28.03.2016 in W-I(2)/Tpr/2015-16 passed by the respondent.

2. By the impugned order 03.02.2016, it has been concluded that order passed under Section 143(3) dated 18.03.2013 for the Assessment Year 2010-11 made protectively becomes substantive and therefore, the petitioner was liable to pay a sum of Rs.2,62,76,350/- as tax due for the said Assessment Year. The impugned order dated 28.03.2016 in W-I(2)/Tpr/2015-16 is pursuant to a representation of the petitioner dated 19.02.2016 to cancel the order dated 03.02.2016. The petitioner has been asked to pay the demand and produce challan.

3. The facts of the case are that the petitioner, a manufacturer of hosiery item had signed an agreement dated 01.04.2009 with M/s.Eastman Exports Global Clothing Private Limited. Under the agreement, the said company had advanced a sum of Rs.6.5 crores to the petitioner to improve the desired infrastructure facility. In the books of account of the petitioner, the aforesaid amount was treated as an advance by the petitioner.

4. On the other hand, M/s. Eastman Exports Global Clothing Private Limited had treated the aforesaid amount as a "revenue expenditure" and claimed the benefit of deduction as allowable expenditure under Section 37(1) of the Income Tax Act, 1961.

5. Since the amount was paid to improve the infrastructure and business of the petitioner with M/s. Eastman Exports Global Clothing Private Limited, the Assessing Officer by an order dated 19.02.2013 concluded that the said company was not entitled to claim expenditure under Section 37(1) of the Income Tax Act, 1961.

6. Aggrieved by the order dated 19.02.2013 of the Assessing Officer disallowing the expenditure Section 37(1) of the Income Tax Act, 1961, M/s. Eastman Exports Global Clothing Private Limited filed an appeal before the Commissioner of Income Tax (Appeals).

7. By an order dated 31.03.2014, the Commissioner of Income Tax (Appeals) upheld the order of the Assessing Officer by holding that the amount paid to the petitioner was a capital expenditure and therefore deduction under Section 37(1) of the Income Tax Act, 1961, could not be allowed to M/s.Eastman Exports Global Clothing Private Limited. On further appeal, the Tribunal

however allowed the expenditure by its order dated 31.07.2014. It is stated that the respondent has preferred an appeal against this order.

8. As far as the petitioner is concerned, since the Assessing Officer in the case of M/s. Eastman Exports Global Clothing Private Limited had held that the expenditure could not be allowed under Section 37(1) of the Income Tax Act, 1961, the aforesaid amount paid to the petitioner was to be protectively assessed till the issue was finally decided in the case of M/s. Eastman Exports Global Clothing Private Limited.

9. The petitioner had preferred an appeal before the Commissioner of Income Tax (Appeals) against the protective Assessment Order dated 18.03.2013 of the Assessing Officer. The said appeal was disposed by the Commissioner of Income Tax (Appeals) by an order dated 23.06.2014 with the following observations:-

> *"In view of the fact that the amount ofRs. 6,50,00,000 has been confirmed as capital expenditure in the case of M/s.Eastman Exports Global Routing Private Limited, the protective assessment in the hands of the assesseei.e, M/s. CIBI International cannot be sustained. Therefore, the appeal is allowed."*

10. It appears that the respondent has not filed any appeal against the said order before the Income Tax Appellate Tribunal. However, in view of the disposal of appeals filed by M/s. Eastman Exports Global Clothing Private Ltd. by the Income Tax Appellate Tribunal vide order dated 31.07.2014 against the order of the Commissioner of Income Tax (Appeals)-II dated 31.03.2014, the respondent has once again issued letter dated 03.02.2016 to conclude that the protective assessment order passed under Section 143(3) on 18.03.2013 becomes substantive order and accordingly the petitioner was liable to pay a tax of Rs. 2,62,76,350/-.

11. The petitioner sent a representation dated 19.02.2016 to the respondent to the effect that in view of the order of the Commissioner of Income Tax (Appeals) dated 23.06.2014 in the petitioner's own case, it was not open for the respondent to demand tax from the petitioner.

12. The respondent has however by the impugned communication dated 28.03.2016, has reiterated the position that they were justified in demanding tax in the light of the order passed by the Income Tax Appellate Tribunal on 31.07.2014 in the M/s.

Eastman Exports Global Clothing Private Ltd.'s case and the Revenue's case.

13. Defending the impugned proceedings, learned Senior Standing Counsel for the respondent submits that respondent has also filed a further appeal before this High Court and therefore the present writ petition is liable to be dismissed as premature.

14. I have considered the arguments advanced by the learned counsel for the petitioner and the Senior Standing Counsel for the respondent.

15. The question of making protective demand based on the assessment of the person who paid the amount to the petitioner appears to be incorrect as assessment cannot be made subject to outcome of collateral proceedings of another person.

16. Assessment has to be completed based on the accounts of the petitioner. It cannot be left open ended as has been done in the case of the petitioner. The petitioner has also successfully challenged the assessment order dated 18.03.2013 before the Commissioner of Income Tax (Appeals) in I.T.A.No.24/13-14 vide

order dated 23.06.2014. Therefore, the impugned demands are unsustainable.

17. Since the assessment procedure adopted by the assessing officer for the petitioner was not proper and had left it opened, I am of the view, it is unsustainable and is therefore liable to be quashed. Therefore, the consequential orders passed by the respondents against the petitioner based on collateral proceedings in the case of M/s. Eastman Exports Global Clothing Private Limited are also liable to be quashed and the case is remitted back to the Assessing Officer to pass a fresh order of assessment on merits in accordance with law taking note of the facts.

18. In fine, the impugned recovery proceedings dated 03.02.2016 and 28.03.2016 are quashed and the case is remitted back to the concerned assessing officer to pass a fresh order of assessment on merits in accordance with law taking note of all the facts.

19. The concerned Assessing Officer is therefore requested to pass a fresh assessment order for the Assessment Year 2010-11 in

the case of the petitioner within a period of three months from the date of receipt a copy of this order.

20. However, in case a collateral appeal of the revenue against Final Order dated 31.07.2014 of the Income Tax Appellate Tribunal which is said to be purportedly pending before this High Court has any bearing on the assessment to be completed, the Assessing Officer may at his discretion await for the outcome of the appeal of the revenue before passing fresh order of assessment for the Assessment Year 2010-11. It is made clear that it is for the Assessing Officer to decide whether to defer or pass order within the period stipulated herein. However, before passing order of assessment, the petitioner shall also be heard.

21. Writ petition stands allowed with the above observation. No cost. Consequently, connected Miscellaneous Petition is closed.

.02.2020

Index :Yes/No
Internet :Yes/No
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To

The Income Tax officer
Ward I (2),
No. 121, 60, feet Road,
Tirupur – 641 602.

C.SARAVANAN, J.

Jen

Pre-Delivery Order
in
W.P.No.16463 of 2016
and
W.M.P.No.14227 of 2016

____.02.2020