

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

MONDAY, THE 29TH DAY OF JUNE 2020 / 8TH ASHADHA, 1942

WP(C).No.10002 OF 2020(A)

PETITIONER:

EQUITY INTELLIGENCE INDIA PRIVATE LIMITED
REPRESENTED BY ITS DIRECTOR,
ABHILASH VARGHESE,
5TH FLOOR, AREEKAL MANSION,
MANORAMA JUNCTION,
MAIN AVENUE,
PANAMPILLY NAGAR,
COCHIN-682 036.

BY ADV. SRI.P.K.RAVI SANKAR

RESPONDENTS:

- 1 DEPUTY COMMISSIONER OF INCOME TAX
CORPORATE CIR 1(1), KOCHI,
CENTRAL REVENUE BUILDING,
I.S. ROAD,
KOCHI-682 018.
- 2 COMMISSIONER OF INCOME TAX (APPEALS)
KOCHI, POORNIMA BUILDINGS,
PANAMPILLY NAGAR,
KOCHI-682 036.

R1- R2 BY ADV. SRI.P.K.RAVINDRANATHA MENON (SR.)
R1- R2 BY SRI.JOSE JOSEPH, SC, FOR INCOME TAX

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
29.06.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 29th day of June 2020

Petitioner, a company registered under the Companies Act, is a 'Portfolio Manager' and through instant writ petition assailed Ext.P14 impugned order dated 20.03.2020, whereby applications for stay submitted along with Exts.P5 and P12 appeals preferred against the assessment orders pertaining to assessment years 2017-18 and 2018-19, have been disposed of by commanding the petitioner to pay 20% of the demanded amount. In support of the aforementioned prayer, it is averred that the petitioner company invests the surplus funds from its principal business of Portfolio Management in equities of Indian Companies, apart from parking the funds in Bank accounts.

2. For the assessment year 2017-18, the petitioner submitted return showing total income and net tax payable. But the same was not accepted resulting into issuance of notice under Section 143(2) of the Income Tax Act and after scrutiny of books of accounts, Ext. P2 assessment order dated 27.12.2019, the net income of the petitioner company was determined as Rs.17,15,01,720/-. Similarly for the assessment year 2018-19, a demand of

Rs.44,30,632/- was raised. The petitioner preferred Exts. P5 and P12 appeals under Section 246 of the Income Tax Act along with stay applications.

3. Adv. Sri.P.K. Ravi Sankar, learned counsel for the petitioner submits that the appellate authority vide Ext.P14 impugned order has erroneously dismissed the applications for stay relying upon Circular dated 31.07.2017 commanding the petitioner to deposit 20% of the demanded amount and there is no reference to the arguments or Circular dated 29.02.2016, whereby an option was given to the similarly situated persons for keeping the sale proceeds either in capital gain or in stock-in-trade.

4. Issue notice before admission.

5. Adv. Sri. Navaneeth N. Nath for Sri. Jose Joseph, learned Standing Counsel accepts notice for respondents and submits that the other connected matters pertaining to disposal of the stay application by not demanding 20% of demanded amount, would not apply as they pertained to demand under Section 80P of the Income Tax Act and do not deny the fact that there is no advertance to the Circular or the arguments alleged to have been submitted on behalf of the petitioner in support of interim stay.

6. Having heard learned counsel for the parties and appraised the paper books, I am of the view that Ext.P14 impugned order is not only bereft of the reasonings but has been passed in a most sketchy and mechanical manner. Ext.P14. Operative part of the order dated 20.03.2020 is extracted hereunder:-

"With reference to your petition for stay of collection of demand and WP(C) No. 4618 of 2020(B) of High Court of Kerala filed by you in the above mentioned cases. Please note that the CBDT's order in O.M. No.404/72/93-ITCC dated 29.02.2016 and in Office Memorandum dated 31.07.2017 "20% of the disputed demand should be paid, where the demand is contested before CIT(A)."

Taking an overall view of the facts and circumstances of the case, further as per CBDT Instruction 1914 and O.M. Dated 31.07.2017, the appellant should pay 20% of the disputed demand immediately and pursue the appeal. Stay is granted for balance demand on the condition of payment of disputed demand till the decision of appeal."

7. Even the assessing officer had also referred to the Circular No. 6 of 2016 dated 29.02.2016 issued by the Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, Government of India, but interpreted in a different context. Quasi-judicial authorities like Commissioner of Income Tax (Appeals) are also legitimately expected to refer to the arguments submitted in

support of the interim prayer sought in support of the memorandum of appeal preferred against the assessment orders and cannot blindly apply the Circular, as in the instant case. Even the order do not reflect whether opportunity of hearing was given to the petitioner nor any advertance to any arguments. Such order cannot escape the scrutiny of the Court, while exercising the power of judicial review under Article 226 of the Constitution of India.

8. In view of what has been noticed above, Ext.P14 impugned order is set aside and the matter is remitted to the Office of the Commissioner of Income Tax (Appeals) - I, to consider the stay applications filed along with Exts.P5 and P12 appeals in respect of assessment years 2017-18 and 2018-19 and pass detailed order, after affording opportunity of hearing to the petitioner. Let this exercise be undertaken within a period of two months and still that time, no coercive action shall be taken against the petitioner.

The writ petition is disposed of.

sd/-

AMIT RAWAL

JUDGE

APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE ARTICLES OF ASSOCIATION OF THE PETITIONER COMPANY.
- EXHIBIT P2 TRUE COPY OF THE ORDER OF ASSESSMENT DATED 27.12.2019 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P3 TRUE COPY OF THE CIRCULAR NO.6 OF 2016 DATED 29.2.2016 ISSUED BY THE CENTRAL BOARD OF DIRECT TAXES, DEPARTMENT OF REVENUE, MINISTRY OF FINANCE GOVERNMENT OF INDIA.
- EXHIBIT P4 TRUE COPY OF THE NOTICE OF DEMAND DATED 27.12.2019 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P5 TRUE COPY OF THE MEMORANDUM OF APPEAL DATED NIL SUBMITTED ON 22.1.2020 SUBMITTED BY THE PETITIONER COMPANY BEFORE THE 2ND RESPONDENT.
- EXHIBIT P6 TRUE COPY OF THE PETITION DATED NIL FILED ON 28.1.2020 BY THE PETITIONER COMPANY BEFORE THE 2ND RESPONDENT.
- EXHIBIT P7 TRUE COPY OF THE JUDGMENT DATED 18.2.2020 IN WP(C) NO.4618 OF 2020 OF THIS HONOURABLE COURT.
- EXHIBIT P8 TRUE COPY OF THE RELEVANT PAGES OF THE INCOME TAX RETURNS FOR THE ASSESSMENT YEAR 20189-19 SUBMITTED BY THE PETITIONER COMPANY.
- EXHIBIT P9 TRUE COPY OF THE COMMUNICATION REFERENCE NUMBER CPC/1819/G22/1882111886 DATED 17.3.2019 ISSUED ON BEHALF OF THE 1ST RESPONDENT TO THE PETITIONER COMPANY.
- EXHIBIT P10 SCREEN SHOT OF THE CLARIFICATION SUBMITTED BY THE PETITIONER COMPANY.
- EXHIBIT P11 TRUE COPY OF THE RECTIFICATION ORDER DATED 30.10.2019 ISSUED UNDER SECTION 154 OF THE INCOME TAX ACT BY THE 1ST RESPONDENT.

- EXHIBIT P12** TRUE COPY OF THE MEMORANDUM OF APPEAL DATED NIL SUBMITTED BY THE PETITIONER COMPANY BEFORE THE 2ND RESPONDENT.
- EXHIBIT P13** TRUE COPY OF THE PETITION DATED NIL BY THE PETITIONER COMPANY BEFORE THE 2ND RESPONDENT.
- EXHIBIT P14** TRUE COPY OF THE ORDER F.NO.CIT(A)-1/STAY OF DEMAND/2019-20 DATED 20.3.2020 ISSUED BY THE 2ND RESPONDENT.