IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27/7/2016

C O R A M

The Honourable **Mr.Justice S.Manikumar**
and
The Honourable **Mr.Justice D.Krishnakumar**

Tax Case Appeal No.477 of 2016

The Commissioner of Income Tax
Chennai. ... Appellant

Vs

M/s.Srivathsa Industries
No.1-A Rajaji Salai
Madhavaram
Chennai 600 060. ... Respondent

Prayer: Appeal filed against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai, dated 31/7/2015, passed in SP No.386/Mds/2015 in I.T.A.No.1562/Mds/2015.

For appellant : Mr.T.Ravi Kumar
Senior Standing Counsel
for the Income Tax Department

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<u>J U D G M E N T</u>

<u>(Judgment of the Court was made by S.Manikumar,J)</u>

Instant Tax Case Appeal is filed against the order, dated 31/7/2015, made in Stay Petition No.386/MDS/2015, in I.T.A.No.1562/MDS/2015 by which the Tribunal, having opined that there is a prima facie case for grant of stay of recovery of the outstanding amount of Rs.15,93,670/- for the assessment year 2010 – 11, for a period of six months from the date of the said order or till the disposal of the appeal, whichever is earlier. The Tribunal has fixed the date of hearing of the appeal on 16/9/2015 and for the reasons stated supra, allowed the stay petition.

2. The instant Tax Case Appeal is filed on the following substantial questions of law:-

> "1. Whether on the facts and in the circumstances of the case, the Income tax Appellate Tribunal was justified in granting stay of recovery of the outstanding amount for a period of six months till 31/7/2015 or till the disposal of appeal without protecting the interest of the Department?

2. Is not the finding of the Tribunal bad by holding that the major disallowance of Rs.29,56,419/- in relation to the payment of commission outside India which is contrary to the finding rendered by the AO that the activities done by the foreign agent clearly fell within the ambit of Fees for technical services and the said decision had also been upheld by the CIT (A)?

3. Whether the reasoning of the Tribunal is proper by holding that the payment of freight charges made amounting to Rs.5,99,266/- on which no TDS has been deducted fell under Section 194 C of the Income Tax Act?"

3. Having regard to the date on which the stay petition was allowed with a direction to post the appeal for hearing on 16/9/2015, we directed Mr.T.Ravikumar, learned Senior Standing Counsel for the

Income Tax Department to ascertain as to whether the appeal in I.T.A.No.1562/Mds/2015 is still pending on the file of the Tribunal.

4. Reverting, Mr.T.Ravikumar, learned Senior Standing counsel for the Income Tax Department submitted that appeal in I.T.A.No.1562/Mds/2015 has been disposed of on 20/11/2015.

5. From the perusal of the photocopy of the order in appeal, produced today, it could be deduced that the appeal was heard on 16/9/2015 and orders were pronounced on 20/11/2015. Thus, as observed, in the Stay Petition No.386/Mds/2015 in I.T.A.No.1562/Mds/2015, appeal had been taken up for hearing on 16/9/2015.

6. In the light of the subsequent developments, the interim order passed in S.P.No.386/Mds/2015 in I.T.A.No.1562/Mds/2015 dated 31/7/2015 has merged with the final order in I.T.A.No.1562/Mds/2015 dated 20/11/2015.

7. However, Mr.T.Ravikumar, learned Senior Standing Counsel for the Income Tax Department submitted that as per the decision of

the Hon'ble Supreme Court, while considering the issue as to whether an applicant is entitled to stay of an order, subject matter of an appeal is filed, it is the duty of the Tribunal or the Court for the matter to consider as to whether there is any irreparable loss, balance of convenience and prima facie hardship and on the facts and circumstances of the instant case, when the Tribunal has failed to consider and advert to the above said aspects, at least a direction be issued to the Tribunal, to be followed in future cases, whenever a request for an interim order is made and for the matters pending before the Tribunal. According to him, interest of the revenue has to be protected. On the above submission, this Court is of the view that before the Tribunal, it is for the Department to substantiate that the above said conditions do not exist in a given case, and to pray that no interim order be granted or extended, or take steps to vacate the same. Needless to state that the above parameters have to be considered.

8. As we have already observed, the impugned interim order has merged in the final disposal of the appeal in I.T.A.No.1562/Mds/2015. The request of the learned Senior Standing Counsel for issuance of any directions to the Tribunal, on the above

parameters, can be considered and issued in pending appeals, where an interim order has become final, without considering the abovesaid paramount factors, viz., prima facie, balance of convenience and irreparable hardship, and in cases where steps have been taken by the Department to highlight the parameters and despite the case, the Tribunal had passed a non-speaking order, and in not in cases where the appeals are already disposed of, issuing directions in the appeals, would be disposed of, academic in nature and therefore, we refrain from doing so.

9. In the light of the above discussion, we are of the view that **Tax Case Appeal No.477 of 2016** has become infructuous and accordingly the same **is dismissed**. No costs.

(S.M.K.,J) (D.K.K.,J)
27th July 2016.

mvs.

Index: yes

website: Yes

To

1. The Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai

2. The Commissioner of Income Tax, Chennai

S.MANIKUMAR,J

a n d

D.KRISHNAKUMAR,J

mvs.

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