(2014) 07 MAD CK 0209

In the Madras High Court

Case No : W.P. (MD) Nos. 12282, 1 and 2 of 2014

Arogya Welfare Trust APPELLANT

Vs

Commissioner of Income-tax RESPONDENT

Date of Decision : 25-07-2014

Acts Referred:
Income Tax Act, 1961 — Section 12AA

Citation : (2014) 226 TAXMAN 174

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Judgement

T.S. Sivagnanam, J.—By consent, the Writ Petition itself is taken up for final disposal. Mr. R. Krishnamoorthy, learned standing counsel for Income Tax Department takes notice for the respondents.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

3. The petitioner as a Trustee challenged the order passed by the second respondent, Assessing Officer, rejecting the petitioner''s stay petition pending disposal of the appeal filed by the petitioner against an order of Assessment made by the authority dated 29.03.2014, by which the total demand raised on the petitioner is Rs. 2,16,44,400/-. The petitioner has filed a statutory appeal as against the said order and the same is pending before the first respondent and application for stay is also pending with the first respondent.

4. In the interregnum since the Assessment Authority issued a demand calling upon the assessee to pay the entire tax together with interest under Section 234(A)(K) of Income-tax Act, the petitioner filed a stay petition before the Assessing Officer and prayed for stay of the entire demand until the appeal before the appellate authority is disposed of. The Assessing Officer, by the impugned order rejected the stay petition by a one paragraph order stating that the assessee has not fulfilled the relevant condition stipulated by C.B.D.T. and

observing that the Board has elaborately narrated the circumstances/conditions required to be satisfied by the assessee before the Assessing Officer to consider his application for grant of stay of calculation of the demand raised.

5. It may true and matter of record that the C.B.D.T. has given instructions to the Assessing Officer and the appellate authority to consider certain conditions/ circumstances while disposing of an application for interim stay. But, however, those instructions cannot be exhaustive so as to limit the discretion/jurisdiction of the Assessing Officer/appellate authority while considering an application for stay as they are required to consider the facts and circumstances pleaded by the assessee/appellant. Even by applying the guidelines or conditions imposed by C.B.D.T., the authority is required to examine as to whether the assessee has made out a prima facie case as to whether there is balance of convenience in his favour or whether the plea of the department is borne out by records and such other circumstances. Therefore, the observation of the Assessing Officer stating that the petitioner has not fulfilled the conditions stipulated in the instructions of C.B.D.T., without observing as to under what circumstances, the petitioner has not made out a prima facie case would establish that the impugned order has been passed without due application of mind. Therefore, this Court is inclined to interfere with the impugned order.

6. It is seen that the petitioner has preferred a statutory appeal to the first respondent as against the order of assessment dated 29.03.2014. In the said appeal, a stay petition has also been filed and the same is pending from 30.04.2014. The petitioner claims to be a Trustee carrying on several charitable activities by running school for special children and the nature of activities is purely charitable and in support of his contention, the petitioner has relied on various decisions of this Court to state that the objects of the Trust qualify for registration under Section 12AA of the Income-tax Act.

7. However, these matters are to be dealt with and agitated before the appellate authority. Since the petitioner has filed an appeal and stay petition is pending as on date before the appellate authority, this Court is of the view that ends of justice would be met interest of revenue be protected if a conditional order of stay is granted till the disposal of the appeal before the first respondent.

8. In that view of the matter, while setting aside the impugned order, there will be a direction to the petitioner to deposit a sum of Rs. 75,00,000/- (Rupees seventy five lakhs only) within a period of eight weeks from the date of receipt of a copy of this order. If such deposit is made to the second respondent within the time permitted, remaining portion of the demand as demanded in the order dated 29.03.2014 shall remained stayed till the appeal is disposed of by the first respondent.

9. It is open to the petitioner to raise all contentions before the appellate authority, who shall be considered the same on merits and in accordance with law.

10. The learned counsel for the revenue submitted that the appellate authority may be directed to disposed of the appeal within a specified time. Considering the submission, the appellate authority is requested to dispose of the appeal within a period of three months from the date of receipt of a copy of this order making it clear that the assessee shall cooperate for the expeditious disposal. With the above direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

