(2012) 06 BOM CK 0004

In the Bombay High Court

Case No : Writ Petition No. 1424 of 2012

Balaji Universal Tradelink (P.) Ltd. APPELLANT

Vs

Union Of India RESPONDENT

Date of Decision : 22-06-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 132, 143(3), 153A, 220(6), 226(3)

Citation : (2012) 06 BOM CK 0004

Hon'ble Judges : S.J. Vazifdar, J;M.S. Sanklecha, J

Bench : Division Bench

Advocate : K. Kapoor with Y.K. Kapoor, Pankaj Manohar, for the Appellant; Tejveer Singh, for the Respondent

Judgement

M.S. Sanklecha, J.—Rule. At the instance and request of the advocates for the petitioner and the respondents, the rule is made returnable forthwith and the petition is heard finally. This petition under Art. 226 of the Constitution of India challenges the order dated 11-5-2012 passed by the CIT(A) on a stay application filed by the petitioners in pending appeals from orders of assessment for assessment years 2004-05 to 2007-08. The petition also seeks that the notices u/s 226(3) of the IT Act, 1961 (the said Act) attaching the petitioners bank accounts be stayed.

2. The relevant facts are as under:

(a) By four orders all dated 29-12-2011, the AO passed assessment orders u/s 153A read with section 143(3) of the said Act for the assessment years 2004-05, 2005-06, 2006-0 and 2007-08 raising a demand aggregating to Rs. 6.33 crores.

(b) The petitioner preferred appeals u/s 246A of the said Act to the CIT(A) against the four assessment orders dated 29-12-2011 relating to assessment years 2004-05 to 2007-08. In the meantime, the petitioner also moved an application for stay before the AO viz. the Asstt. CIT u/s 220(6) of the said Act.

However the AO rejected the same.

(c) Pending the disposal of petitioners appeals by the CIT(A), the Asstt. CIT issued notices u/s 226(3) of the said Act to the petitioners bankers attaching the petitioners funds for purposes of meeting the petitioners tax liability. The banks were required to pay over the amount belonging to the petitioners, to the respondents.

(d) In view of the above, the petitioners filed Writ Petn. (Lodging) No. 905 of 2012, inter alia, challenging the notices issued to the petitioners bankers u/s 226(3) of the said Act even though its appeals from the assessment orders were pending before the CIT(A). By an order dated 24-4-2012, the petitioner was permitted to file before the CIT(A), an application for stay of the demand and directed the CIT(A) to hear the petitioner and pass a reasoned order. Status quo was ordered to be maintained in respect of the notices issued u/s 226(3) of the said Act. This Court also directed that in the event of the stay application of the petitioners being rejected by the CIT(A) the ad interim protection granted by this Court shall continue for a period of 2 weeks thereafter.

(e) Consequently, on 27-4-2012, the petitioners filed before the CIT(A) an application for stay. The petitioner in its application pleaded that it has a strong case on merits and the entire proceedings against it are completely without jurisdiction in as much as no search u/s 132 of the said Act was conducted in its case and, therefore, the assessment orders u/s 153A of the said Act could not have been passed. The petitioner also pleaded that in the absence of stay it would suffer irreparable loss and injury and that its business had come to a standstill in view of the notices u/s 226(3) of the said Act issued to its bankers.

(f) On 11-5-2012, the CIT(A), by the impugned orders, dismissed the petitioners stay application dated 27-4-2012.

3. Mr. K. Kapoor, the learned counsel appearing on behalf of the petitioner submits that the order dated 14-5-2012 passed by the CIT(A) is without due application of mind and without having considered the various submissions made by the petitioner. Further, it is his contention that the CBDT circular dated 21-8-1968 (sic) which provides that where the assessed income is substantially higher than the returned income then the collection of tax in dispute must be stayed till the decision of the appellate authority has been ignored. Ill this case according to the petitioner, the assessed income is higher than the returned income by as much as 842 times for assessment year 2004-05, 11,372 times for assessment year 2005-06, 2,981 times for assessment year 2006-07 and 842 times for assessment year 2007-08. Finally he submits that the impugned order ignores the direction of this Court in its order dated 24-4-, 2012, directing the CIT(A) to pass a reasoned order on the stay application filed by the petitioners.

On the other hand, Mr. Tejveer Singh, the learned counsel appearing for the respondent supports the impugned order and submits that the petitioner has not led any evidence to show that any financial hardship would be caused to the petitioners in case they are required to deposit the demand confirmed by the AO. He stated that the petitioner had not even filed its current balance sheet. So far as high-pitched assessments i.e. assessments far in excess of returned income are concerned; he points out that the impugned order refers to the report of the AO that the petitioner belongs to a group of companies which are engaged in hawala transactions/operations, which are under investigation. He further submits that the amounts assessed to tax are huge and it is necessary that the interest of respondent be protected. In the circumstances according to him an order directing an interim payment of 50 per cent of demand is just and reasonable in the facts of the present case and calls for no interference by this Court.

4. We find that the CIT(A) in his order dated 11-5-2012 has not considered the submissions made by the petitioners in support of his prayers for stay--in particular that the assessment orders are without jurisdiction; that the deposit of the amount pending the final disposal of the appeal by the CIT(A) would cause it grave hardship and that its entire business has come to a standstill in view of the notices of attachment issued to its bankers u/s 226(3) of the said Act. The only submission which has been dealt with by the CIT(A) is with regard to the reliance placed by the petitioners on the CBDT circular dated 21-8-1968 to the effect that the same has been superseded. We have not examined the correctness of the above submission. All other submissions of the petitioners have not been dealt with. Further the impugned order even does not record the case of the petitioner for stay while directing a deposit of 50 per cent of tax demanded. This Court in the matter of KEC International Ltd. Vs. B.R. Balakrishnan and Others, has laid down the parameters for granting stay pending the disposal of the appeals. The parameters laid down in the above case have been repeatedly reiterated by this Court to the effect that while considering/deciding the stay application under the said Act, the authority must: (i) briefly state the case of the party; (ii) consider whether the party has made out a case for unconditional stay; (iii) the financial difficulty if pleaded be considered and (iv) in case the authority concerned comes to the conclusion that by granting of stay the assessee is likely to defeat the claim of the Department then brief reasons for the same be indicated. In the present case, we find that the CIT(A) has completely ignored the parameters laid down by this Court in the matter of KEC International Ltd. (supra) and has passed an order without considering all the submissions of the petitioners and also failing to point out even briefly in the order as to why the interim payment of 50 per cent of Rs. 6.36 crores is necessary in the facts of the present case. We do not suggest that the reasons must be elaborate for the order is only on an interim application. However, brief reasons indicating the basis of a prima facie view are necessary.

5. However, we find that the petitioner has not filed its balance sheet and other financial particulars to substantiate its submission that the deposit would cause them undue hardship. Mr. Kapoor stated that the petitioner was not called upon to produce its current balance sheet. Mr. Singh denies the same. It is

unnecessary for us to decide this controversy in view of the order we intend passing. Suffice it to state that the current balance sheet is a relevant document and both parties must be permitted to refer to the same.

6. Considering the facts of this case, though we are of the view that the impugned order needs to be set aside and the petitioners application for stay dated 27-4-2012 be disposed of by the CIT(A) by a reasoned order after hearing the petitioners, the interest of the Revenue also heeds to be protected.

7. Mr. Kapoor states, on instructions, that the petitioner has an immovable property viz. a factory in Noida, the value whereof is about Rs. 1.50 crores and he undertakes on behalf of the petitioners that the same will not be sold and/or encumbered in any manner till the disposal of its appeal before CIT (A). He states that the property is unencumbered. It is difficult for us to consider the value or the nature of this property. The property by itself is not sufficient to protect the Revenue. These are aspects which must be considered by the AO at the hearing of the application.

8. In view of the above, we pass the following order:

(a) The impugned order dated 11-5-2012 is quashed and set aside;

(b) The CIT(A) shall pass a fresh order with reasons on the petitioners stay application dated 27-4-2012, preferably within two weeks from the receipt of this order. The petitioner shall not seek any adjournment. The petitioner shall appear before the CIT(A), in the first instance, at 11:00 a.m., on 2-7-2012 and thereafter as directed by the CIT(A).

(c) The petitioners undertaking not to dispose of, alienate, encumber, part with possession of or create any third party right, title and/or interest in respect of the immovable property at Noida, is accepted. Further, it is also so ordered by this Court. The particulars of the property shall be stated on an affidavit to be filed in this Court and before the CIT(A) on or before 2-7-2012.

(d) The notices issued u/s 226(3) of the said Act to the various bankers of the petitioners will continue. The status quo with regard to the same would be maintained i.e., neither the petitioner nor the respondents will take the amounts belonging to the petitioner and lying in its accounts with its bankers till the disposal of the stay application by the CIT(A) and for two weeks thereafter.

(e) The attachment of the properties belonging to the petitioner u/s 28IB of the said Act shall continue and is not being disturbed by this order.

With the above directions the petition is disposed of. No order as to the costs.

