(2006) 04 MAD CK 0012

In the Madras High Court

Case No : Writ Petition No. 11225 of 2006 and W.P.M.P. No. 12763 of 2006

Fountainhead Communications Ltd. APPELLANT

Vs

Additional Commissioner of Income Tax, Company Range II, Commissioner of Income Tax, (Appeals) - III and Income Tax Appellate Tribunal RESPONDENT

Date of Decision : 21-04-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Income Tax Act, 1961 — Section 226(3), 269(SS), 27(1), 271(D), 273(B)

Citation : (2006) 205 CTR 415 : (2007) 285 ITR 36 : (2006) 285 ITR 36 : (2007) 164 TAXMAN 426

Hon'ble Judges : K. Mohan Ram, J

Bench : Single Bench

Advocate : P.S. Raman, for Sivanandraj, for the Appellant; Pushya Seetharaman (IT), for the Respondent

Judgement

K. Mohan Ram, J.—Ms. Pushya Seetharaman, learned Senior Central Government Standing Counsel, takes notice for the respondents. By

consent of both the parties, the writ petition itself is taken up for final disposal.

2. The prayer in the writ petition is for the issuance of a Writ of Certiorari to set aside the order dated 31.03.2006 passed by the Income Tax

Appellate Tribunal, Chennai - Bench :A.

3. The facts of the case are as follows:

The petitioner Company filed its returns for the assessment year 2003-2004 on 01.12.2003 declaring an income of Rs.30,00,780/- along with a

tax audit report u/s 44AB as an annexure enlisting the cash transactions in excess of Rs.20,000/- to bring the notice of authorities. Pursuant

thereto, the Additional Commissioner of Income Tax, Company Range II, on

30.08.2004, issued a notice to furnish the reasons for the two

transactions in cash in excess of Rs.20,000/- failing which a penalty would be levied at the rate of 100% of the amount transacted in cash. On

25.02.2005, the petitioner Company filed its reply to the show cause notice explaining the pressing circumstances due to which cash transactions in

excess of Rs.20,000/- were executed. The First respondent rejected the explanations of the petitioner without giving reasons and levied a penalty

of Rs.11,65,240/-. The petitioner preferred an appeal to the second respondent. The second respondent upheld the findings of the First

respondent and dismissed the appeal. Hence the petitioner preferred an appeal before the Income Tax Appellate Tribunal and the same is pending

for disposal. The First respondent has been sending notices u/s 226(3) to various banks where the petitioner maintains an account and also to

various clients of the petitioner. It is pertinent to submit that the First respondent issued notices to the tune of Rs.22,52,039/-, eventhough the

penalty u/s 27(1) was only Rs.11,65,240/-. The petitioner filed a stay petition before the Tribunal and the same was taken up for hearing on

31.03.2006 and the Tribunal passed the following order:

By this stay petition, the assessee seeks stay for recovery of disputed tax demand of Rs.11,65,240/-

2. After hearing the rival parties and perusing the material placed before us, we are of the opinion that it is not a fit case for grant of stay as the

assessee has not paid any amount of the total demand raised by the Department and the tax due which is now sought to be stayed is in the nature

of penalty. However, we are inclined to grant early hearing of the appeal and accordingly direct the Registry to post the case for hearing on out of

turn basis on 01.06.2006. It is also directed that the Assessee will not seek unnecessary adjournment on the date of hearing of the appeal.

Aggrieved by the said order the above writ petition has been filed.

4. Heard Mr. P.S. Raman, learned Senior Counsel for the petitioner, and Ms. Pushya Seetharaman, learned Senior Standing Counsel for the

respondents.

5. Mr. P.S. Raman, learned Senior Counsel for the petitioner, drew the attention of this Court to the provisions contained in Section 269(SS),

271(D) and 273(B) of the Income Tax Act and submitted that the order of the

First Appellate Authority is a non speaking order and drew the

attention of this Court to paragraph 6 of the order of the First Appellate Authority is as follows:

6. I have considered the rival submissions. The appellant stated that the cash loan was taken to settle a supplier payment and to get its cheques

honoured. I do not find any considerable force in the submissions of the appellant. In the circumstances of the case, I do not find any infirmity in the

action of the Additional Commissioner of Income Tax who levied the penalty, as this case is a fit case for levy of penalty. The penalty of

Rs.11,65,240/- levied u/s 271D is confirmed. The appellant fails on this ground.

6. Referring to the above said order of the First Appellate Authority, the learned Senior Counsel submits that though all the transactions are

reflected in the account books and there is no allegation of any suppression of income etc., the First Appellate Authority has not at all considered

the explanations submitted by the petitioner in the grounds of appeal filed and in the petition seeking for waiver and sufficient grounds have been

raised to establish a prima facie case for grant of waiver. But the Tribunal has not at all considered any of these aspects, but has simply rejected the

petition and fixed an early date for hearing.

7. Ms. Pushya Seetharaman, learned Senior Standing Counsel for the Income Tax Department submits that the Tribunal has fixed an early date for

the hearing of the appeal, since the liability on the petitioner is huge. She submitted that some conditions should be imposed for granting interim

orders.

8. The said submissions made by the learned Senior Counsel for the petitioner are acceptable and it is prima facie seen that the First Appellate

Authority has not at all considered the case on merits and has also not considered the various objections and explanations offered by the petitioner.

The order of the First Appellate Authority is virtually a non speaking order passed in a mechanical manner. The Tribunal ought to have considered

these aspects of the matter and considered the petition filed by the petitioner for waiver in accordance with law. But, instead of doing that, the

Tribunal has passed an order rejecting the petition stating that it is not a fit case for grant of stay, as the assessee has not paid any amount towards

the total demand raised by the Department and the tax due which is now sought to be stayed is in the nature of penalty. This Court is of the

considered view that the Tribunal has also committed an error in not considering as to whether a prima face case has been made out for granting

waiver, as prayed for by the petitioner when a huge amount is demanded from the petitioner assessee that too in the nature of penalty. The Tribunal

ought to have considered whether a prima facie case is made out or not. Since the order suffers from non application of mind, the same is liable to

be set aside.

K. Mohan Ram, J.

9. Considering the fact that all the transactions in question are reflected in the accounts as submitted by the learned Senior Counsel for the

petitioner and there is no suppression, there shall be an order of interim stay till the disposal of the Appeal. Since the Tribunal has fixed an early

date for final disposal of the appeal i.e. on 01.06.2006, the petitioner shall not seek any adjournment on that date and cooperate with the Tribunal

in disposing of the appeal.

With the above directions the writ petition is disposed of. No costs. Consequently, connected W.P.M.P is closed.

