(2013) 05 GUJ CK 0001

In the Gujarat High Court

Case No : Special Civil Application No''s. 3600 to 3602 of 2013

Gujarat State Energy Generation Ltd. APPELLANT

Vs

Assistant Commissioner of Income Tax RESPONDENT

Date of Decision : 06-05-2013

Acts Referred:

Citation : (2013) 262 CTR 44 : (2013) 358 ITR 254

Hon'ble Judges : Sonia Gokani, J;Akil Kureshi, J

Bench : Division Bench

Advocate : S.N. Soparkar, Ms. Bhoomi Thakore, Monaal Davawala and B.S. Soparkar, for the Appellant; Sudhir M. Mehta, for the Respondent

Final Decision : Disposed Off

Judgement

Akil Kureshi, J.—These petitions involve similar issues concerning same parties. They have, therefore, been heard together and would be disposed of by this common order. Facts may be noticed as emerging from Special Civil Appln. No. 3600 of 2013. Petitioner, Gujarat State Energy Generation Ltd. (the company'' for short) is a Government company registered under the Companies Act. The petitioner has challenged the notice dt. 20th Feb., 2013 as at Annex. A to the petition issued by the respondent, Asstt. CIT, seeking recovery of a sum of Rs. 3.22 crores (rounded off). In such notice, it was further conveyed as under:

2. The amount should be paid to the manager, authorized bank/SBI, RBI at within fifteen days of the service of notice. The previous approval of the Dy. CIT has been obtained for allowing a period of less than 30 days for payment of the above sum. A challan is enclosed for the purpose of payment.

2. The notice has been challenged solely on the ground that in terms of sub-s. (1) of s. 220 of the IT Act, 1961 (''the Act'' for short), the petitioner-assessee was entitled to a period of thirty days to pay the sum, whereas the notice granted a shorter period of 15 days. The case of the petitioner is that though it may be open for the respondent to curtail such period, as provided under sub-s.

(1) of s. 220, the requirements as provided in the proviso to the said section were not fulfilled. In other words, the case of the petitioner is that the respondent neither recorded reasons to believe that granting full period of 30 days would be detrimental to the Revenue, nor any previous approval of the Jt. CIT for curtailing the period was taken.

3. On 26th March, 2013, we had recorded such a contention of the petitioner''s counsel while issuing notice and granting stay, in following terms:

2. Counsel for the petitioner pointed out that the assessment order was passed on 20th Feb., 2013. On the same day impugned notice was issued. The petitioner is in the process of filing appeal before the CIT(A). On 22nd March, 2013 the petitioner wrote to the respondent pointing out that under s. 220 of the Act, ordinarily, recovery would not be commenced before 30 days of service of notice, whereas in the present case, only 15 days of time is granted and further that in terms of sub-s. (6) of s. 220 of the Act, the petitioner assessee may not be treated as an assessee in default. Without disposing of such application/ objection, the respondent is proceeding with coercive recovery.

3. Counsel further pointed out that though under sub-s. (1) of s. 220, the AO has the power to reduce the period of 30 days for recovery, same should be done only on AO having reason to believe that it will be detrimental to the Revenue, if the full period of 30 days is allowed. He submitted that in the present case, no such reasons are either recorded or exist since the petitioner is a Government company and whose liquidity is not in doubt.

4. Issue notice returnable on 9th April 2013. The respondent shall not carry out coercive recovery pursuant to impugned notice annexed at Annex. A.

4. In response to such notice, the respondent has appeared and filed affidavit-in-reply today. In such affidavit, however, there is no denial to the petitioner''s assertion that no reasons were recorded for believing that granting full period of 30 days would be detrimental to the interests of the Revenue. The affidavit also obviously, therefore, does not throw any light on the fulfillment of the requirements and the prior approval of the Jt. CIT.

5. One more relevant development after filing of the petition is that the petitioner has already preferred an appeal against the assessment order giving rise to the recovery proceedings. Pending such appeal, the petitioner had also applied to the AO for staying the recovery. Acting on such a petition, the AO has granted stay upto 31st July, 2013.

6. Learned counsel Shri Sudhir Mehta for the Revenue produced the original files in which on 4th March, 2013, the respondent had recorded his brief reasons for curtailing the period of 30 days envisaged in s. 220(1) of the Act. This was on the basis that as per the action plan decided by the CBDT, 30 per cent of the demand raised during the year should be recovered in the financial year 2012-13. For such purpose, it was necessary to reduce the period of 30 days to

15 days so that the demand falls during the current financial year.

7. Counsel for the Revenue, however, stated under instructions of the respondent, who is present before the Court, that no prior approval in writing was obtained from the Jt. CIT though he further stated that oral approval of the Jt. CIT can be presumed by virtue of the fact that such decision was taken in a joint meeting with several IT authorities, including the Jt. CIT.

8. Sec. 156 of the Act pertains to notice of demand and provides, inter alia, that when any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under the Act, the AO shall serve upon the assessee a notice of demand in the prescribed form specifying the sum so payable. Sub-s. (1) of s. 220 in terms provides that any amount, otherwise than by way of advance tax, specified as payable in a notice of demand under s. 156, shall be paid within 30 days of the service of the notice. Proviso to sub-s. (1) of s. 220, however, empowers the AO to reduce such a period of 30 days if he has reason to believe that it will be detrimental to the Revenue if the full period is allowed. In such a case, he is required to obtain prior approval of the Jt. CIT and specify such a shorter period in notice under s. 156 of the Act. Sec. 220(1) reads as under:

220. When tax payable and when assessee deemed in default--(1) Any amount otherwise than by way of advance tax, specified as payable in a notice of demand under s. 156 shall be paid within thirty days of the service of the notice at the place and to the person mentioned in the notice:

Provided that, where the AO has any reason to believe that it will be detrimental to Revenue if the full period of thirty days aforesaid is allowed, he may, with the previous approval of the Jt. CIT direct that the sum specified in the notice of demand shall be paid within such period being a period less than the period of thirty days aforesaid, as may be specified by him in the notice of demand.

9. In the present case, we have serious doubt if the reasons recorded by the AO, though not referred to in the affidavit-in-reply, could be stated to be sufficient to enable him to believe that it was detrimental to the Revenue if the full period of 30 days was allowed. Further, admittedly, no prior approval of the Jt. CIT in writing was obtained. Mere discussion in a meeting of several high ranking tax officers chalking out certain action plan for timely recoveries would not, in our opinion, satisfy such a requirement which must be observed individually. By very nature of things, curtailing the period of 30 days and reducing the same for tax recovery by a shorter period would cause considerable inconvenience to the assessee. The Act does recognize the power of the AO to do so. Exercise of such power would be dependent on the reason to believe that it will be detrimental to the Revenue if the full period is allowed and further that he obtained prior approval of the Jt. CIT. Approval of the Jt. CIT, thus is an important safeguard and the manner in which it is stated to have been observed in the present case, is simply not sufficient compliance with such a requirement. Additionally, we also notice that the petitioner is a Government company. There is nothing on record

to suggest that if full period of 30 days was allowed, the petitioner would have defaulted or would have in any manner frustrated the recovery. Under the circumstances, we would have examined the question further and considered whether the period specified in the impugned notice should be tampered with. However, prima facie believing that, under the circumstances that we considering, notice under s. 156 thus may not be rendered ineffective, since it may be possible to argue that recovery notice under s. 156 can be severed from the period from which the sum demanded under such notice would become payable under s. 220(1) of the Act, we are not inclined to pass any further or final order in this respect. Additionally, as already noted, under the order of this Court, the petitioner did receive full period of 30 days and beyond for recovery and in the meantime, the AO himself passed an order staying recoveries. Under the circumstances, in our opinion, by virtue of the abovenoted developments, purpose of filing the petitions is served out. These petitions are disposed of accordingly.

