(2015) 09 AP CK 0062

In the Andhra Pradesh High Court

Case No : Writ Petition No. 29448 of 2015

Kavitha Rajakoti APPELLANT

Vs

Income Tax Officer and Others RESPONDENT

Date of Decision : 23-09-2015

Acts Referred:
Income Tax Act, 1961 — Section 220(3), 220(6), 220(7), 54, 54(2)

Citation : (2015) 09 AP CK 0062

Hon'ble Judges : G. Chandraiah and Challa Kodanda Ram, JJ.

Bench : Division Bench

Advocate : S. Dwarakanath, for the Appellant; B. Narasimha Sharma, Standing Counsel, for the Respondent

Judgement

Challa Kodanda Ram, J.—This writ petition questions the order dated 07.08.2015 passed by the 1st respondent rejecting stay of collection of tax, pending appeal before the 4th respondent, for the Assessment Year 2012-13.

2. Heard Mr. S. Dwarakanath, learned counsel for the petitioner, and Mr. B. Narasimha Sharma, learned Standing Counsel for the respondents.

3. The exemption claimed by the petitioner for the amount deposited under the Capital Gains Account Scheme, under Section 54(2) of the Income Tax Act, came to be rejected by the 1st respondent/Assessing Officer. Further, the petitioner''s claim for exemption on the amount paid after filing of the return also came to be rejected. The petitioner filed an appeal before the 4th respondent and the same is pending. During pendency of appeal, the petitioner filed an application before the Assessing Officer/1st respondent seeking stay of the impugned demand, but the same came to be rejected. Incidentally, it is the same Assessing Officer who passed the Assessment Order. The stay petition came to be rejected observing:

"The demand for the AY 2012-13 arose on account of wrong claim of deductions u/s. 54 of the Act and the facts were elaborately discussed in the assessment order. Hence, I am confident that the assessment order will be confirmed by the

Appellate Authorities. It is pertinent to mention here that filing appeal before the CIT(A) does not confer you for stay of collection of appeal.

(emphasis is ours.)

In view of the above, your petition for stay of collections is rejected and you are requested to clear off the demand immediately, failing which coercive steps will be taken for recovery of demand as deemed fit."

4. A perusal of the impugned order does not reveal proper appreciation of necessary considerations that are required to be taken into consideration by the Assessing Officer when a stay application is filed before him. The method and manner of considering stay applications by the Assessing Officer, pending disposal of the appeal, are set out in the Central Board of Direct Taxes (CBDT) Instructions No. 1914 dated 02.12.1993. The relevant portion of the said instructions read as under:

"C. GUIDELINES FOR STAYING DEMAND.

(i) A demand will be stayed only if there are valid reasons for doing so. Mere filing an appeal against the assessment order will not be sufficient reason to stay the recovery of demand. A few illustrative situations where stay could be granted are -

(a) if the demand in dispute relates to issues that have been decided in assessee''s favour by an appellate authority or court earlier; or

(b) if the demand in dispute has arisen because the Assessing officer had adopted an interpretation of law in respect of which there exist conflicting decisions of one or more High Courts (not of the High Court under whose jurisdiction the Assessing Officer is working); or

(c) if the High Court having jurisdiction has adopted a contrary interpretation but the Department has not accepted that judgement.

It is clarified that in these situations also, stay may be granted only in respect of the amount attributable to such disputed points. Further, where it is subsequently found that the assessee has not cooperated in the early disposal of appeal or where a subsequent pronouncement by a higher appellate authority or court alters the above situation, the stay order may be reviewed and modified. The above illustrations are, of course, not exhaustive.

(ii) In granting stay, the Assessing officer may impose such conditions as he may think fit. Thus he may

(a) require the assessee to offer suitable security to safeguard the interest of revenue;

(b) require the assessee to pay towards the disputed taxes a reasonable amount in lumpsum or in instalments;

(c) require an undertaking from the assessee that he will cooperate in the early disposal of appeal failing which the stay order will be cancelled;

(d) reserve the right to review the order passed after expiry of reasonable period, say upto 6 months, or if the assessee has not cooperated in the early disposal of appeal, or where a subsequent pronouncement by a higher appellate authority or court alters the above situations;

(e) reserve a right to adjust refunds arising, if any against the demand.

(iii) Payment by instalments may be liberally allowed so as to collect the entire demand within a reasonable period not exceeding 18 months.

(iv) Since the phrase ''stay of demand'' does not occur in Section 220(6) of the Income-tax Act, the Assessing officer should always use in any order passed under Section 220(6) [or under Section 220(3) or Section 220(7)], the expression that occurs in the section viz, that he agrees to treat the assessee as not being in default in respect of the amount specified, subject to such conditions as he deems fit to impose.

(v) While considering an application under Section 220(6), the Assessing Officer should consider all relevant factors having a bearing on the demand raised and communicate his decision in the form of a speaking order."

5. Apart from this, the Assessing Officer is required to act in a fair manner and need to consider the stay petition independently and pass a speaking order stating reasons as to why the stay application of the petitioner is not required to be considered, as the order passed by the Assessing Officer may either be upheld or otherwise revised by the appellate authority. Learned counsel for the petitioner submits that, in similar circumstances, this Court in W.P. No. 29198 of 2005 has set aside the stay rejection order passed by the Assessing Officer and remanded the matter back to the Assessing Officer for fresh consideration of the stay application. In the present case, as the order passed by the Assessing Officer in the stay application being a non-speaking order, the same is liable to be set aside.

6. Accordingly, the impugned order is set aside. The 1st respondent is directed to consider the stay application afresh keeping in view the instructions in CBDT Circular No. 1914 dated 02.12.1993. The petitioner is given liberty to submit further representation and bring additional facts, if any, to the notice of the Assessing Officer. It is needless to mention that an opportunity of hearing may be afforded, if the petitioner so desires.

7. Subject to the above observations, the writ petition is allowed. No costs. Miscellaneous petitions, if any pending, shall stand closed.