(2011) 10 MP CK 0046

In the Madhya Pradesh High Court

Case No : Writ Petition No. 17684 of 2011

Maihar Cement Ltd. APPELLANT

Vs

Commissioner of I.T. (TDS) RESPONDENT

Date of Decision : 19-10-2011

Acts Referred:
Income Tax Act, 1961 — Section 220(6)

Citation : (2011) 10 MP CK 0046

Hon'ble Judges : Vimla Jain, J;K.K. Lahoti, J

Bench : Division Bench

Judgement

1. This petition is directed against an order dated 26.9.2011 Annexure P-6 passed by the Commissioner of Income Tax(TDS), Bhopal by which the authority directed the petitioner to immediately make payment of installment for August,2011 and 10% of the demand in subsequent months till 31.12.2011 or disposal of the appeal by the CIT(A), whichever is earlier.

2. The case of the petitioner is that the assessment order Annexure P-1 was passed by the Assistant Commissioner, Income Tax, Jabalpur on 23.3.2011 by which a liability of Rs. 7,45,35,540/- was assessed on the petitioner. The petitioner filed an appeal against the order before the CIT(A), Jabalpur. After filing of the appeal, petitioner moved to respondent No. 1, on administrative side, for staying the recovery as was found by Annexure P-1 dated 23.3.2011. The respondent No. 1 vide order dated 8.8.2011 on administrative side, allowed the prayer of the petitioner and stayed the demand up to 31.12.2011 or till the decision by the CIT(A), whichever is earlier, subject to payment of amount @ 10% of the demand every month starting from August,2011. Thereafter petitioner moved an application seeking review of the order on the ground that the authority had not extended an opportunity of hearing before passing order Annexure P-2 dated 8.8.2011. At the time of hearing of the review petition, the petitioner produced certain documents and it was submitted on behalf of the petitioner that it is considering withdrawal of appeal filed before the CIT(A) and

to file petition u/s 220(6) of the Income Tax Act as an alternative remedy. The respondent No. 1 on raising such contention granted interim order till 26.9.2011 which reflects from the perusal of the order Annexure P-6 itself. But the petitioner decided to press its appeal and thereafter moved an application before the respondent No. 1 for extension of the interim order as was passed by the respondent No. 1 as per order Annexure P-6 but such prayer was declined and the petitioner was directed to make payment as per order dated 8.8.2011, so petitioner has approached this Court. It is not in dispute that against the order Annexure P-1 an appeal has already been preferred by the petitioner which is pending before the CIT(A), Jabalpur. Though the petitioner had approached to respondent No. 1 for grant of interim stay but it appears that no application has been filed by the petitioner before respondent No. 2 in pending appeal seeking interim stay of the recovery. The respondent No. 1 exercised its administrative powers while granting interim order but at present the appropriate authority for staying the entire recovery is respondent No. 2, before whom the appeal is pending and the petitioner may move an application seeking stay of the recovery.

3. In these circumstances, at present we are not inclined to entertain this petition and dispose of finally with following directions :

1. Petitioner may approach to respondent No. 2 in pending appeal against the order Annexure P-1 by filing an application for staying the recovery under Annexure P-1.

2. For a period of one week from today, it is directed that the respondents shall not take any coercive action against the petitioner for enforcing recovery under order Annexure P-1.

3. The respondent No. 2,on filing such an application for staying the recovery, shall consider and decide the same expeditiously, as far as possible within a period of two weeks from the date of filing of the aforesaid.

No order as to costs.

C.C. as per rules.

