**(2016) 03 AHC CK 0233**

**In the Allahabad High Court**

**Case No :** Writ Tax No. 301 of 2016

M/S Mahalaxmi Crafts & Tissues Pvt. Ltd. APPELLANT

Vs

Asstt. C.I.T. RESPONDENT

**Date of Decision :** 31-03-2016

**Acts Referred:**

**Citation :** (2016) 93 UPTC 262

**Hon'ble Judges :** Dilip Gupta and Surya Prakash Kesarwani, JJ.

**Bench :** Division Bench

**Advocate :** Abhinav Mehrotra, Advocate, for the Petitioner; Piyush Agarwal, Advocate, for the Respondent

**Final Decision :** Disposed Off

## Judgement

1. This petition has been filed for quashing the order dated 11 March 2016 passed by the Principal Commissioner of Income Tax, Muzaffarnagar on the petition for stay of demand filed by the petitioner.

2. It is stated that for the A.Y. 2012-13 an order was passed on 31 March 2015 determining the income at Rs.3,20,17,882/- as against the returned income of Rs.17,07,650/-. This resulted in tax demand of Rs.1,31,95,160/-.

3. Initially the Additional Commissioner of Income Tax, Range 1, Muzaffarnagar granted stay of demand subject to payment of 20% of the demand by 29 February 2016. The petitioner filed a First Appeal and also filed a petition before Principal Commissioner of Income Tax, Muzaffarnagar for stay of balance demand until disposal of the First Appeal. The Principal Commissioner of Income Tax, Muzaffarnagar, prima facie found that the demand was based on credible evidence and so it would be just if pending the disposal of the First Appeal, the assessee was directed to deposit 50% of the disputed tax. However, as 20% had already been deposited by the assessee, it was directed that assessee should pay the balance 30% of the disputed tax by 22 March 2016. In addition thereto, the assessee was also required to give an undertaking that it will cooperate in the

 

early disposal of the First Appeal and will not seek any adjournment and would also provide by 14 March 2016 the details of all the bank accounts.

4. Sri Abhinav Mehrotra, learned counsel appearing for the petitioner has submitted that in the facts and circumstances of the case, when the First Appeal was not being heard by the Commissioner of Income Tax (A), even though it had been filed way back on 30 April 2016, it was wholly unjust on the part of the Principal Commissioner of Income Tax to require the petitioner to deposit the remaining 30% of the disputed tax. It is submitted that this Court may not only reduce the amount required to be deposited by the petitioner but should also issue a direction for early disposal of the First Appeal.

5. Sri Piyush Agarwal, learned counsel appearing for the respondents has, however, submitted that the order passed by the Principal Commissioner of Income Tax, Muzaffarnaga does not suffer from any illegality. He has, however, very fairly stated that Commissioner of Income Tax (A) shall make all endeavours to decide the First Appeal at an early date.

6. We have considered the submissions advanced by the learned counsel for the parties.

7. In our opinion the order passed by the Principal Commissioner of Income Tax, Muzaffarnagar does not call for any interference under Article 226 of the Constitution as 50% of the disputed tax has been directed to be deposited after recording a prima facie finding that the addition made by the Assessing Officer was based on credible evidence. However, as the First Appeal was filed way back on 30 April 2015, we consider it appropriate in the facts and circumstances of the case, to direct that if the petitioner deposits the balance 30% of the disputed tax by 7 April 2016 (though time was granted by the Principal Commissioner of Income Tax, Muzaffarnagar to pay the said amount by 22 March 2016) and submits proof of it before Commissioner of Income Tax (A), the Commissioner of Income Tax, shall make all endeavours to decide the First Appeal filed by the petitioner within a month thereafter. However, the petitioner shall not seek any adjournment and will cooperate in the disposal of the First Appeal.

8. Learned counsel for the petitioner has also stated that coercive measures are being taken by the department for non deposit of the 30% of the disputed taxed amount by 22 March 2016.

9. In view of the above, we direct that till 7 April 2016 by which date the petitioner has been directed to deposit 30% of the balance amount, no coercive steps shall be taken by the Department. However, if the petitioner fails to deposit the balance 30% of the disputed tax by 7 April 2016, the protection granted by the Court shall stand automatically withdrawn and it will be open to the Department to pursue the matter in accordance with law.

10. It is made clear that the Court has not adjudicated on the merits of the First Appeal filed by the petitioner and it will be for the Appellate Authority to examine

 

the same without being influenced by any of the observations made by the High Court in this order or the Principal Commissioner of Income Tax, Muzaffarnagar on the application filed by the petitioner for stay of the demand.

11. The writ petition is disposed of with the aforesaid observations.

 