(2011) 03 RAJ CK 0019

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4026 of 2011

Rising Buildestate (P.) Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 28-03-2011

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2011) 202 TAXMAN 253

Hon'ble Judges : Mahesh Bhagwati, J

Bench : Single Bench

Judgement

Mahesh Bhagwati, J.—By way of the instant writ petition, the petitioner has sought the following relief:

(i) Quash and setting aside the the impugned order dated 8-3-2011 passed by the respondent No. 3 with the direction to stay the demand till the decision of first appeal, which is pending before the respondent No. 2 and the respondent No. 2 may be directed to decide the appeal at the earliest.

(ii) Any other order or direction, which the Hon''ble Court deems fit and proper, may kindly be passed in favour of the petitioner.

(iii) Award cost of the writ petition to the petitioner.

2. Having considered the submissions made at the bar and carefully perused the relevant material on record, it is noticed that the Deputy Commissioner of income tax, Central Circle-2, Jaipur assessed Rs. 2,61,66,611 to be the income of the petitioner for the year 2007-08 and raised a demand of Rs. 1,38,33,389 payable by the petitioner. Aggrieved with this assessment order, the petitioner filed an appeal before the Commissioner (Appeals) which has been pending for its decision.

3. The petitioner also filed a stay application before the Assessing Officer and the Assessing Officer who happens to be the Deputy Commissioner of income tax

(Central Circle-2), Jaipur in the instant case passed an order in the following terms:

The pendency of appeal proceedings are by no means a bar to recovery and your hope of getting relief in appeal is thoroughly misplaced. However, looking into the totality of the case, you are being given time till 20th of March to deposit 50 per cent of the total demand failing which coercive action will be necessitated for recovery of tax demand.

4. Learned counsel for the petitioner canvassed that the demand raised by the Assessing Officer is highly excessive, exorbitant and contrary to the material available before the Assessing Officer which needs to be stayed. In alternate, the learned counsel for the petitioner also submitted that in case the demand raised by the concerned authority is not stayed, Commissioner Appeals may be directed to dispose of the appeal as early as possible.

5. In view of the judgment rendered by Hon''ble Apex Court in the case of United Bank of India Vs. Satyawati Tondon and Others, the Hon''ble Apex Court has expected from the High Court not to ordinarily entertain a petition under Article 226 of the Constitution, if an efficacious remedy is available to the aggrieved person.

6. It is tangible that the appeal has already been pending before the Commissioner of income tax (Appeals) against the order of the Assessing Officer. The Hon''ble Apex Court has also given a word caution in matters of taxes, cess, fees, etc. that the recovery of taxes should not be stayed. Hence, in view of the aforesaid judgment of the Hon''ble Apex Court, the writ petition filed by the petitioner being not maintainable, deserves to be dismissed and the same stands dismissed accordingly.

7. However, keeping in view the alternate prayer made by the learned counsel for petitioner, the Commissioner of income tax (Appeals), Jaipur is directed to decide the appeal as early as possible, preferably within a period of three months positively.

8. The writ petition stands disposed of accordingly.