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(2017) 02 BOM CK 0088

In the Bombay High Court

Case No : Writ Petn. No. 1515 of 2017

Sinhcad Technical Education Society APPELLANT

Vs

Tax Recovery Officer RESPONDENT

Date of Decision : 08-02-2017

Acts Referred:

Income Tax Act, 1961 — Section 220(6)

Citation : (2017) 293 CurTR 109 : (2017) 246 Taxman 26

Hon'ble Judges : M.S. Sanklecha and A.K. Menon, JJ.

Bench : Division Bench

Advocate : J.D. Mistri with Niraj Sheth i/b Nitin S. Dhumal, Advocates, for the Petitioner; Sham Waive, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

1. This petition challenges the order dated 15th Jan., 2017 passed by the Director General of IT (Investigation), Pune relating to asst. yrs. 2008-09 to 2014-15. By the impugned order dated 15th Jan., 2017, the petitioner''s application for not being treated as an assessee in default in respect of assessment orders from which appeals to the CIT(A) were pending disposal, were disposed of by one order as the principal issues in appeal for the subject assessment years are similar.

2. The impugned order dated 15th Jan., 2017 has granted a stay of recovery of a total demand aggregating to Rs. 141.76 crores, subject to the petitioner depositing an amount of 15 per cent of the aforesaid amount i.e. Rs. 21 crores. However, the impugned order directs the petitioner to pay the amount of Rs. 21 crores in instalment of Rs. 1.75 crores per month beginning with 25th Jan., 2017 till the decision of the CIT(A) on the petitioner''s pending appeals. In fact, the impugned order dated 15th Jan., 2017 notes in conclusion as under :

"14. It may be noted that the amount of monthly payment is only 1.24 per cent of the total demand. If the assessee co-operates with the CIT(A) and the appeals

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are decided say in the month of March, 2017, the assessee will be required to pay only Rs. 3.5 crores in two instalments against total demand of Rs. 141 crores. The demand position will be reviewed by AO after the decision of CIT(A)."

3. We are informed that the CIT(A) has commenced hearing the petitioner''s appeals for asst. yrs. 2008-09 to 2014-15 on 2nd Feb., 2017. In view of the above, we did not get into the merits of the petitioner''s challenge to the impugned order and asked Mr. Waive, learned counsel for the respondent-Revenue as to how long the CIT(A) will take to dispose of the appeals in respect of which the hearing has already commenced. Mr. Waive, on instructions states that the same would be disposed of as expeditiously as possible. However, he is unable to commit himself to a date as the record is voluminous.

4. We asked Mr. Mistri, learned senior counsel for the petitioner whether any new grounds/evidence which were not a part of the proceedings before the AO are being raised/filed before the CIT(A) which may necessitate calling for a remand report from the AO. We are informed that no such issue is being raised before the CIT(A) and the appeals could be decided on evidence and orders already on record.

5. In the above view, we are unable to understand why there should be delay in disposing of the appeals of which hearing has already commenced. Mr. Waive, learned counsel for the respondent-Revenue was not able to give any specific reason as to why CIT(A) is unable to commit himself to a date by which the appeals would be disposed of, save and except that records are voluminous.

6. We note that the impugned order itself records the fact that the appeals are likely to be decided by March, 2017. However, we do not wish to give any time frame by which the CIT(A) should dispose of the appeals as we are not aware of his work pressure. Nevertheless, we do not appreciate the delay in the disposal of the appeals, the hearing of which has commenced. It gives rise to a doubt that it is being specifically delayed with an ulterior object of collecting the Revenue on issues which are subject-matters of appeals and on which a conditional stay has been granted by the Director General of IT (Investigation) till the decision of the CIT(A). Early disposal of appeals by the CIT(A) after commencement of hearing would be in the interest of both the petitioner and the Revenue. It is expected of the petitioner to co-operate in early disposal of the appeals by the CIT(A). However, in the present facts, if the co-operation is not forthcoming, the CIT(A) would be justified in disposing of the appeals on the basis of the papers and proceedings before him.

7. We, therefore, are of the view that the petitioner will, every month, in terms of the impugned order deposit Rs. 1.75 crore till the decision of the CIT(A) or 31st March, 2017 whichever is earlier. In case, the CIT(A) does not decide the appeals before 31st March, 2017, the petitioner''s balance unpaid demand of Rs. 141 crores will be kept in abeyance till such time the CIT(A) decides the petitioner''s appeals. It is clarified that in terms of the impugned order dated

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15th Jan., 2017, instalments payable, if the appeal before CIT(A) is pending till 31st March, 2017 will be three instalments i.e. one payable by 25th Jan., 2017 (time extended by this order), second by 25th Feb., 2017 and third by 25th March, 2017.

8. The petitioner and the Revenue are agreed that an amount of Rs. 89.81 lakhs which have been recovered by the Revenue by attachment of the petitioner''s bank account will be adjusted in respect of the first instalment of Rs. 1.75 crores payable on or before 25th Jan., 2017. It is also agreed that there is further amount of Rs. 85.50 lakhs of refund which the petitioner claims to be entitled consequent to the order of the Tribunal for asst. yr. 2006-07. The AO will work out the exact quantum of the refund payable to the petitioner consequent to the order of the Tribunal for asst. yr. 2006-07 and appropriate the amount so determined in respect of the first instalment of Rs. 1.75 crores payable by the petitioner to the Revenue. We are informed that the petitioner''s bank accounts have been attached. The respondent Revenue would be entitled to withdraw the amount, if any, from the attached bank accounts and adjust the same towards the first instalment of Rs. 1.75 crore. Needless to state that if there is any excess amount recovered from the aforesaid exercise, the same would be adjusted towards subsequent instalments of Rs. 1.75 crores payable every month.

9. Mr. Mistri, learned senior counsel appearing for the petitioner, on instructions, states that on AO indicating to the petitioner''s the shortfall towards the payment of the first instalment, the same would be paid by the petitioner within a period of one week from the date of its communication. Therefore, the time to make the payment of first instalment payable by 25th Jan., 2017 stands extended till the aforesaid exercise is carried out including one week''s notice to the petitioner in case of shortfall.

10. Mr. Waive, learned counsel for the Revenue, on instructions, states that the AO upon withdrawing the amounts from the petitioner''s bank account and appropriating it towards the instalment payable by the petitioner, consequent to the assessment orders, the attachments on the bank accounts would be vacated by the AO. It is made clear that in case the petitioner does not pay the instalments on or before the due date i.e. 25th Feb., 2017 and 25th March, 2017 or the shortfall in the first instalment determined is not paid within one week of the same being communicated (after the above exercise of adjustment), the protection under this order shall stand vacated.

11. The petition is disposed of in the aforesaid terms. No order as to costs.

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