

Court No. - 32

Case :- WRIT TAX No. - 367 of 2012

Petitioner :- L.G.Electronics India Pvt. Ltd.

Respondent :- The Commissioner Of Income-Tax And Others

Petitioner Counsel :- Ritesh Kumar Agrahari

Respondent Counsel :- C.S.C./Income Tax

Hon'ble Ashok Bhushan,J.

Hon'ble Prakash Krishna,J.

Heard Sri Ritesh Kumar Agrahari, learned counsel for the petitioner, and Sri Bharat Ji Agarwal, learned Senior Advocate, assisted by Sri Ritesh Jain, for the department. By consent of learned counsel for the parties, the writ petition is being finally decided.

This writ petition has been filed praying for quashing the order dated 19 March, 2012 passed by the Commissioner of Income Tax (Appeals) by which the stay application filed by the petitioners in appeal has been disposed of by allowing it partly directing the assessee to pay 30 percent of the total demand.

Learned counsel for the petitioner in support of the writ petition, contends that the Commissioner of Income Tax (Appeals) having himself found in the order impugned that "***I find enough strength in the plea of the assessee for stay of demand***" there was no occasion to direct for depositing 30 percent of the total demand. He submits that in view of the aforesaid prima facie opinion formed by the Commissioner, it was a fit case for stay of the total demand. He further submits that the case was covered by Section 194-C and was not governed by Section 194-I which was apparent from looking into the contract of service and other materials which were before the authorities themselves. He has placed reliance on judgment of Gujarat High Court in Tax Appeal No. 1037 of 2009 (***Commissioner of Income Tax (TDS) vs. Swayam Shipping Services Pvt Ltd.***) decided on 11.01.2011.

Shri Bharat Ji Agarwal, learned Senior Advocate, appearing for the

department, submits that the Commissioner has discretion to grant partial interim relief even if it was a prima facie case. He has placed reliance on paragraphs 7 and 11 of the judgment of the Apex Court dated 9th February, 2009 in the case of ***M/s Pennar Industries Ltd. vs. State of Andhra Pradesh.***

We have considered the submissions of learned counsel for the parties and perused the record.

The grounds which were pressed by the petitioner in support of the stay application has been noticed by the Commissioner. The CBDT circular No. 1914 has also been relied which has been quoted by the petitioner in writ petition. After hearing the assessee's authorised representative and written submissions of the company, following was observed by the commissioner of appeals:-

"The assessee had not taken the trailers/cranes on hire or rent from the said parties. The assessee has given sub-contracts to the said parties for the transportation of goods and not for renting out of machineries and equipments. Section 1941 of the Act makes provision for deduction of tax at source where any person who is responsible for paying to a resident any income by way of rent where as section 194C of the Act makes provision for deduction of tax at source where any person is responsible for paying any sum to any resident for carrying out any work including supply of labour for carrying out any work in pursuance of a contract between the contractor and a specified person. In the facts of

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the present case, there is nothing to indicate that the assessee has taken trailers/cranes on rent so as to attract the provisions of Section 1941 of the Act. The assessee had given sub-contracts for transportation of goods. In the circumstances, the said transactions would fall within the purview of section 194C of the Act as the assessee was responsible for paying the amount in question for carrying out work in pursuance of contracts between the assessee and the transporters and as such was required to deduct tax at source at the rate prescribed under the said section. The Commissioner (Appeals) was, therefore, justified in holding that the assessee was not an assessee in default within the meaning of the said expression as contemplated under section 201 of the Act and consequently, the Tribunal was justified in confirming the order passed by the Commissioner (Appeals)."

The Commissioner referred to the judgment of the Apex Court in the case of **Assistant Collector of Central Excise vs. Dunlop India Ltd.** reported in (1985) 154 ITR 172 (SC) and circular of CBDT No.1914 and directed for deposit of 30% of the total demand.

The judgment of the Apex Court in **M/s Pennar Industries's** case (supra) laid down following in paragraph 7:-

"7. It is true that on merely establishing a prima

facie case, interim order of protection should not be passed. But if on a cursory glance it appears that the demand raised has no leg to stand, it would be undesirable to require the assessee to pay full or substantive part of the demand. Petitions for stay should not be disposed of in a routine matter unmindful of the consequences flowing from the order requiring the assessee to deposit full or part of the demand. There can be no rule of universal application in such matters and the order has to be passed keeping in view the factual scenario involved. Merely because this Court has indicated the principles that does not give a license to the forum/authority to pass an order which cannot be sustained on the touchstone of fairness, legality and public interest. Where denial of interim relief may lead to public mischief, grave irreparable private injury or shake a citizens' faith in the impartiality of public administration, interim relief can be given."

The Apex Court in the aforesaid judgment has observed that it is true that on merely establishing a prima facie case, interim order of protection should not be passed. But if on a cursory glance it appears that the demand raised has no leg to stand, it would be undesirable to require the assessee to pay full or substantive part of the demand. From the perusal of materials brought on record, we are of the view that the Commissioner having himself expressed

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opinion in the order that there is enough strength in the plea of the assessee for stay of the demand, there was no occasion to direct for deposit of 30 percent. Thus the judgment relied by learned counsel for the petitioner also supports his submission. However, looking to the fact that we are only considering the stay application our any observation be not treated as concluded opinion on the issue and it shall be open for the Commissioner while deciding the appeal, to decide the appeal on merits without being influenced by any of our observation made in this order.

In view of the above, ends of justice be served in setting aside the order dated 19th March, 2012 and directing the appellate authority to decide the appeal finally on merits. We provide that during pendency of the appeal the demand against the petitioner shall be kept in abeyance. It is ordered accordingly. However, the petitioner shall furnish adequate security to the satisfaction of the respondent No. 4 for the amount to be deposited under the order of the Commissioner Income Tax (Appeals) i.e. 30% of the total demand within ten days. We make it clear that in case the security as directed above is not furnished, the petitioner shall not be entitled for any benefit of this order.

Accordingly, the writ petition is finally disposed of.

Order Date :- 22.3.2012
Sumaira