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11 & 12**% 01.12.2009**

Present: Mr. Deepak Chopra, Adv. for the Petitioner.
Mr. Sanjeev Sabharwal, Adv. for the Respondent.

+ **WP(C) No. 13419/2009**
WP(C) No. 13424/2009

(Common Order)

* Rule DB.

With the consent of parties the matter is taken up for final hearing and disposal at this stage itself.

This writ petition is filed against the orders dated 11th November, 2009 passed by Respondent No.1 namely Assistant Director of Income Tax under Section 226(3) of the Income Tax Act. By these orders bank accounts of the Petitioner are attached. Further one of their clients M/s Reliance Gas Transportation Infrastructure Ltd. is asked not to make any payments to the Petitioner.

Putting the facts of the case succinctly and in a brief manner we may note that the case relates to the assessment years 2004-05 and 2005-06. For the assessment year 2004-05 assessment is framed at Rs.6,46,58,228/- raising a tax demand of Rs.2,42,56,025/-. In respect of the assessment year 2005-06 assessment is framed at Rs.5,66,16,930/- raising a tax demand of Rs.1,90,89,266/-. The Petitioner is a foreign company which has



undertaken certain projects in India and for that purpose i
having its permanent establishment in India. The issue relates to
the percentage of tax on the income earned by the Petitioner in
India. The Assessing Officer has assessed the said income to tax @
42%. The Petitioner has challenged these assessment orders by
filing appeals before the CIT(A) which are registered as ITA
No. 358/06-07 and ITA 02/08-09. The case of the Petitioner is that
the tax payable is only @ 10% and, even if, ultimately the plea of
the Department is accepted in no case it would exceed 20%.

The appeal in respect of assessment year 2004-05 was
heard on 26th May, 2008. However, the CIT(A) could not pass any
order and the concerned officer who had heard the appeal was
transferred. This appeal was again heard on 16th January, 2009 but
even that appellate authority could not pass the order as he also
stood transferred to some other place. In this manner, though the
appeal was heard twice, no decision on the said appeal has been
given so far. We are informed that the appeals are now listed for
hearing on 22nd December, 2009

In the meantime, for non-payment of tax as demanded
by virtue of assessment orders, attachment orders dated 11th
November, 2009 have been passed.

It is the submission of the Petitioner that when the



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appeals were being heard and were, in fact, heard twice on ear occasions, the Petitioner was under *bona fide* impression that the decision shall be rendered one way or the other. For this reason Petitioner had not preferred any application seeking stay of the demand. It is also submitted that before taking such an action, no opportunity was granted to the Petitioner to approach the Respondent No.3/CIT(A) for seeking stay of the demands who is seized of the matter. It is also stated that with the attachment of the bank account of the Petitioner and restraining the aforesaid client of the Petitioner not to make payment to the Petitioner, he business of the Petitioner is suffering badly, inasmuch as it would difficult for the Petitioner to carry out projects for want of liquidity.

Mr. Sabharwal, learned counsel for the Respondent, on the other hand, submits that though the appeals were filed, the Petitioner had not made any attempt to seek stay of the tax demand and for this it is the Petitioner who has to blame itself. It is also submitted that the Petitioner is a foreign company and, therefore, interest of the Revenue lies in securing the amount and when the tax demand was not made in spite of the fact that the assessment orders were passed in December, 2006 and December, 2007 respectively, for such a long period, the Respondent No.1 was left with no alternative but to pass such attachment orders.



After giving our considerations to the afore:
submissions and keeping in mind the interest of both the parties we
dispose of the writ petition with following directions:

- (1) Since the Petitioner is a foreign company it has no immovable assets in this country. Learned counsel for the Petitioner has produced balance sheet of the Petitioner-company as on 31st March, 2009. Schedule-I thereof which contains a list of fixed assets includes, apart from computers, office equipment, furniture & fixture etc., plant and machinery. The cost of plant and machinery as on 31st March, 2009 is shown at Rs.7,71,59,781.45. Learned counsel for the Petitioner, on instructions, says that the Petitioner would offer the aforesaid plant & machinery as security for discharge of its income tax liability, which would ultimately be found as a result of the disposal of the aforesaid appeal. We, accordingly, direct that the Petitioner shall file an affidavit of undertaking in this Court not to sell, dispose of or create third party interest in any manner whatsoever in the aforesaid items of plant & machinery as disclosed



in the said balance sheet. The Petitioner shall undertake not to re-export the same till the tax demand, as determined, is satisfied. A similar affidavit shall be given to the Respondent No.1 agreeing to the attachment of these plant & machinery in which the place(s) where these plant and machinery are located shall also be mentioned. The affidavit shall also stipulate that these plant & machinery are now charged to the tax demand.

- (2) The Petitioner shall deposit a sum of Rs.1.25 crores within two weeks with the Respondent No.1.
- (3) The Petitioner shall be at liberty to move such application with the Respondent No.1 and/or any other authority where such an application is maintainable, within one week from today. It would be for the Assessing Officer or any other authority before whom such an application is made, to consider the same on its merits and pass speaking orders thereupon.



- (4) Further, the Respondent shall be permitted to take further course of action depending upon the outcome of the said application. However, it would not deprive the Petitioner to take legal recourse against the orders passed in the said application if the Petitioner is aggrieved by such an order.
- (5) We impress upon the CIT (A) to hear the appeals finally on 22nd December, 2009 and decide the same as expeditiously as possible.
- (6) The attachment orders dated 11th November, 2009 shall be kept in abeyance and will not be operative till the decision in stay application.

Dasti to counsel for the parties.


A.K. SIKRI, J.


SIDDHARTH MRIDUL, J.

DECEMBER 1, 2009

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