

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURTDATED: **27.02.2019**

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE**W.P.(MD).4527 of 2019****and****W.M.P.(MD).Nos.3608 & 3609 of 2019**

M/s Veisa Technologies,
Represented by its partner,
K.K.Saravanan,
S/o Krishnamoorthi,
No.33, 1st floor, KRT Complex,
Bharathidasan Salai, Trichy - 1,
Trichy District.

... Petitioner

VS-

1. The Assistant Commissioner of Income Tax,
Office of the
Assistant Commissioner of Income Tax,
Circle 3(1), Cantonment,
Trichy -1, Trichy District.
2. The Commissioner of Income Tax, (A),
Office of the Commissioner of Income Tax,
Cantonment,
Trichy - 1,
Trichy District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to 1st respondent proceedings made in Notice No. ITBA/AST/S/156/2018-2019/1014609697(1) dated on 27.12.2018 quash the same and further direct the 2nd respondent to consider the objections raised by the petitioner's firm dated on 21.12.2018.

For Petitioner : Mr.R.Sundar

For Respondents : Mr.N.Dilip Kumar,
Senior Panel Counsel

ORDER

The instant writ petition has been filed challenging the demand made by the first respondent in notice No. ITBA/AST/S/156/2018-19/1014609697(1) dated 27.12.2018.

2. It is the case of the petitioner that the first respondent passed an assessment order dated 27.12.2018 under Section 143(3) of the Income Tax Act directing the petitioner to pay a sum of Rs. 3,01,58,680/- (Rupees Three Crores and One Lakh Fifty Eight Thousand Six Hundred and Eighty only) as income tax for the assessment year 2016-17. Aggrieved by the assessment order dated 27.12.2018, passed by the first respondent, the petitioner preferred an appeal before the second respondent under section 246(A) of the Income Tax Act on 27.01.2019. Along with the assessment order dated 27.12.2018, passed by the first respondent, the impugned demand on the same date was sent by the first respondent, demanding a sum of Rs.3,01,58,680/- as income tax. The petitioner has now challenged the impugned demand made by the first respondent in this Writ Petition, pending the appeal before the first

respondent on the ground that the objections raised by the petitioner were not considered by the first respondent in the assessment order dated 27.12.2018.

3. Heard Mr.R.Sundar, learned counsel for the petitioner and Mr.N.Dilip Kumar, learned standing counsel appearing on behalf of the respondents.

4. Mr.N.Dilip Kumar, learned standing counsel appearing for the respondents brought to the notice of this Court, the Office Memorandum dated 31.07.2017, issued by the Ministry of Finance, Government of India, which reads as follows:-

"Instruction No.1914 dated 21.03.1996 contains guidelines issued by the Board regarding procedure to be followed for recovery of outstanding demand, including procedure for grant of stay of demand.

Vide O.M.No.404/72/93-ITCC dated 29.02.2016, revised guidelines were issued in partial modification of Instrumentation No.1914, wherein, inter alia, vide para 4(A) it had been laid down that in a case where the outstanding demand is disputed before CIT(A), the Assessing Officer shall grant stay of demand till disposal of first appeal on payment of 15% of the disputed demand unless the case falls in the category

discussed in para (B) thereunder. Similar reference to the standard rate of 15% have also been made in succeeding paragraphs therein.

The matter has been reviewed by the Board in the light of feedback received from field authorities. In view of the Board's efforts to contain over pitched assessments through several measures resulting in fairer and more reasonable assessment orders, the standard rate of 15% of the disputed demand is found to be on the lower side. Accordingly, it has been decided that the standard rate prescribed in O.M. dated 29.02.2016 be revised to 20% of the disputed demand, where the demand is contested before CIT(A). Thus, all reference to 15% of the disputed demand in the aforesaid O.M. dated 29.02.2016 hereby stand modified to 20% of the disputed demand. Other guidelines contained in the O.M. dated 29.02.2016 shall remain unchanged."

5. As seen from the Official Memorandum, once 20% of the disputed demand is paid, the Assessing Officer shall grant stay of the demand till disposal of the Appeal, unless the case falls under the category discussed in paragraph (B). Paragraph (B) as found in the official memorandum dated 29.02.2016 issued by the Government of India, Ministry of Finance, Central Board of Direct Taxes (CBDT) reads as follows:

“(B) In a situation where,

(a) the assessing officer is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount higher than 15% is warranted (e.g., in a case where addition on the same issue has been confirmed by appellate authorities in earlier years or the decision of the Supreme Court or jurisdictional High Court is in favour of Revenue or addition is based on credible evidence collected in a search or survey operation, etc.,) or,

(b) the assessing officer is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount lower than 15% is warranted (eg in a case where addition on the same issue has been deleted by appellate authorities in earlier years or the decision of the Supreme Court of jurisdictional High Court is in favour of the assessee, etc.) the assessing officer shall refer the matter to the administrative Pr.CIT/CIT, who after considering all relevant facts shall decide the quantum/proportion of demand to be paid by the assessee as lump sum payment for granting a stay of the balance demand.”

6. In the instant case, the petitioner has already filed an Appeal against the demand dated 27.12.2018 before the second respondent on 27.01.2019, raising identical grounds as raised in the instant writ petition. As seen from the averments in the affidavit filed in support

of the writ petition, it is the apprehension of the petitioner that the condition for grant of stay before the second respondent is onerous. Since the condition has now been relaxed as seen from the Official Memorandum dated 31.07.2017 read with paragraph (B) of the official memorandum dated 29.02.2016, issued by the Government of India, Ministry of Finance, Central Board of Direct Taxes (CBDT) whereby the petitioner can obtain an order of stay of the demand dated 27.12.2018, by paying 20% of the disputed demand of tax. Therefore, the apprehension of the petitioner that for obtaining the stay, conditions imposed will be onerous are no more applicable.

7. Learned counsel for the petitioner has also conceded that in view of the Official Memorandum referred to supra, the petitioner will approach the Assessing Officer, by paying 20% of the disputed demand and seek stay of the impugned demand, by filing an application under section 220 (3) and 220 (6) of the Income Tax Act.

8. In the light of the above observations and after hearing the submissions of both the learned Counsels, the petitioner is granted liberty to approach the Assessing Officer as per the Office Memorandum dated 31.07.2017 read with paragraph (B) of the

official memorandum dated 29.02.2016, issued by the Government of India, Ministry of Finance, Central Board of Direct Taxes (CBDT), by paying 20% of the disputed demand and seek stay of the impugned demand dated 27.12.2018 by filing an application under Section 220 (3) or 220 (6) of the Income Tax Act, as the case may be.

9. With the aforesaid direction, the **Writ Petition is Disposed of**. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

27.02.2019

Index : Yes/No
Internet: Yes/No

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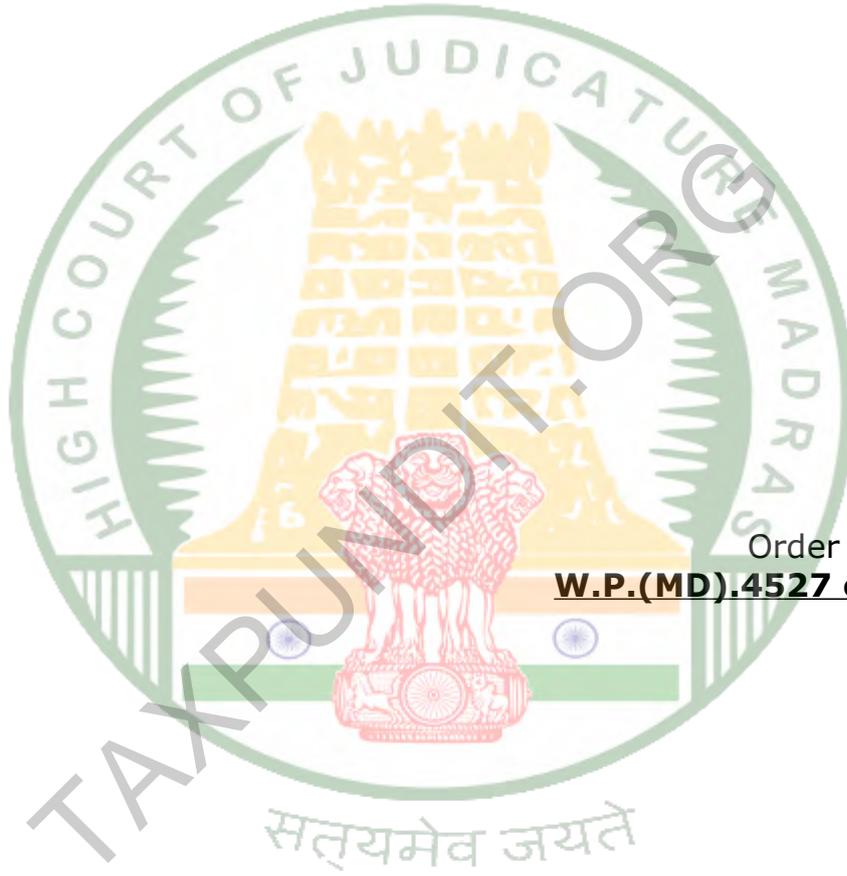
Note: Registry is directed to issue order copy on **28.02.2019**

To

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2. The Commissioner of Income Tax, (A),
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ABDUL QUDDHOSE, J.,

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Order made in
W.P.(MD).4527 of 2019

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