

WP(C) 1378/2009

BEFORE

THE HON'BLE MR. JUSTICE AMITAVA ROY

Heard Dr. A. Saraf, Senior Advocate assisted by Ms. ML Gope for the petitioner and Mr. U. Bhuyan, learned Standing Counsel, Revenue.

For the order, which I propose to pass, it is not considered necessary to deal with the factual details.

Suffice it to mention that against the order of assessment dated 31.12.2008 of the Assistant Commissioner of Income Tax, Circle-Bongaigaon, Bongaigaon, an amount of Rs. 2,95,48,591/- tax is payable by the petitioner for the assessment year 2006-2007. It has already preferred a statutory appeal before the Commissioner of Income Tax (Appeals), Guwahati, which is still pending. Along with the appeal, the petitioner has also filed an application on 27.01.2009 before the same authority praying for an order to keep in abeyance the recovery proceeding relating to the impugned demand pending disposal of the appeal.

While the appeal, as well as the application for the interim relief, is pending, the Assistant Commissioner of Income Tax, Bongaigaon Circle, Bongaigaon, Assam has issued the impugned letter dated 24.03.2009 (Annexure - G of the writ petition), directing the petitioner to make payment of 70% of the tax assessed amounting to Rs.2,06,84,020/-, on or before 31.03.2009. Being aggrieved, the petitioner is before this Court for redress.

Dr. Saraf, has submitted that the impugned order in visible enforcement of the demand, which is the subject matter of appeal, is arbitrary, unfair and unjust and therefore ought to be interfered with.

The learned Senior Counsel on instructions, has submitted that the unfairness in disposition of the revenue authorities is also apparent from the letter dated 28.03.2009 issued by the Asstt. Commissioner of Income Tax, Circle-Bongaigaon, Bongaigaon to the Branch Manager, State Bank of India, Dhaligaon Branch, Dhaligaon, District- Chirang requiring the bank U/s. 226(3) of the Income Tax Act, 1961 to disburse the aforementioned amount forthwith from the account of the petitioner. The decision of this Court in Bongaigaon Refinery & Petrochemicals Limited, vis-a-vis, Commissioner of Income Tax & Ors. [(239 ITR 871) (1999)] has been pressed into service on behalf of the petitioner.

Mr. Bhuyan, without prejudice to the rights and contentions of the parties, has submitted that if deemed expedient, this petition may be disposed of by directing the Commissioner of Income Tax (Appeals) to pass appropriate orders on the petitioner's application for interim relief fixing a time frame.

Upon hearing the learned counsel for the parties and on a consideration of the pleaded facts, as well as the decision of this Court in Bongaigaon Refinery & Petrochemicals Limited, vis- -vis, Commissioner of Income Tax & Ors. (Supra), I am of the view that it would be in fitness of things if the stay application filed by the petitioner along with the appeal is directed to be disposed of on merits by granting a limited interim protection for the present.

In the above view of the matter, this petition stands disposed with a direction to the Commissioner, Income-Tax (Appeals), Guwahati to take up for consideration the petitioner's application for interim relief as indicated hereinabove and pass appropriate order(s) thereon in accordance with law within a period of 15 days from today. In other words, the aforementioned appellate authority would take a decision on the petitioner's application for stay latest by 10.04.2009.

On balancing the equities, it is provided that for this period, the respondents would not pursue the recovery proceeding in terms of the impugned letter dated 24.03.2009.

The petition stands allowed in the above terms.

No costs.