

Agarwal Developers (P) Ltd. Vs. Assistant Commissioner of Income

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Dec-17-2003

Reported in : (2004)83TTJ(Delhi)375

Judge : K Singhal, G Pannu

Appellant : Agarwal Developers (P) Ltd.

Respondent : Assistant Commissioner of Income

Judgement :

1. The impugned petitions are preferred by the assesseees in consequence to the recovery proceedings initiated by the Department in terms of the various notices which are placed on record in relation to the demands arising as a result of the assessment for the block period 1989 to 2001-02 in the entire group.

2. Briefly stated, the background leading to the impugned petitions can be summarised as under. That the applicants herein belong to a group of assesseees, precisely 35 in number, out of which appeals in the cases of 29 assesseees have since been disposed of by the Tribunal. The remaining six corresponding to the impugned petitions are pending for disposal before the Tribunal. Meanwhile, the Tribunal granted stay of the recovery of the outstanding demand vide its order dt. 14th Aug., 2000.

The said stay was to operate till the disposal of the entire set of appeals, as noticed above. The relevant papers evidencing the above are placed before us in

the paper book filed on behalf of the petitioners.

Subsequently, the Revenue has since started the recovery proceedings by way of issuing notices under Section 221(1) of the Act, copies of which are placed in the paper book filed along with the petition before us.

The ostensible reason for such an action of the Revenue is an interpretation of the insertion of second proviso to Section 254(2A) of the Act, to the effect that if an appeal is not disposed of by the Tribunal within 180 days of the date of passing of the stay order, then the order of the Tribunal granting the stay of demand stands automatically vacated. Hence, the present petitions of the applicants.

3. Against the aforesaid facts, Sh. Salil Agarwal, learned counsel submitted that the interpretation taken by the Revenue is wholly misplaced insomuch as that the second proviso to Section 254(2A) does not suggest nor is it intended to operate retrospectively. According to him, the stay of the impugned demands has since been granted by the Tribunal vide its orders dt. 14th Aug., 2000 and subsequently followed in its order dt, 22nd April, 2002, thereby showing that the stay was granted even prior to the insertion of the impugned proviso. It is further submitted that notwithstanding the aforesaid, the stay of the impugned demand deserves to be allowed, insomuch as the Tribunal in 29 other cases of the group has already taken a view favourable to the assesses and therefore, in the pending appeals there existed a puma facie case in favour of the assessee. Further, the counsel submitted that the six appeals of the assessees are already listed for hearing for 23rd Dec., 2003 which also indicates that no prejudice is caused to the Department if the stay is continued.

4. On the other hand, the learned Departmental Representative Sh.

Prahlad Singh appearing on behalf of the Department did not controvert the aforesaid factual matrix brought out but, nevertheless defended the action of the lower authorities in making recovery of the outstanding amounts.

5. We have carefully considered the rival submissions and have also anxiously perused the entire material placed before us and proceed to dispose of the

impugned petitions in the following lines. At the outset, we may state that, as agreed to at the time of hearing by both the parties, the impugned petitions are being treated as interlocutory applications by the assessee seeking directions of the Tribunal within the purview of Section 254(1) itself. With this premise, we proceed further.

6. After considering the entire legal position with respect to the issue on hand, we are of the considered view that the stay on the recovery of outstanding demands granted by the Tribunal vide its order dt. 14th Aug., 2000, continues to be in force and the insertion of the second proviso to Section 254(2A) w.e.f. 1st June, 2001, does not negate the same. Notwithstanding the aforesaid legal position, we are also conscious of the fact that certain appeals of the assessee group have already been decided in favour of the assessee by the Tribunal, which on a prima facie basis would have a bearing on the issues before the Tribunal in the impugned pending appeals. Without, in any way attempting to consider the merits of the issues before the Tribunal, this fact is enough to conclude that there exists balance of convenience in favour of the assessee in so far as the existence of a prima facie case in its favour is made out. Therefore, considering the entire set of facts, specially that the appeals of the assessees are already listed and are ripe for hearing, no interference is called for in the earlier orders of the Tribunal, which continues to remain in force.

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