

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION No.2164/2007.

Mahindra and Mahindra Ltd. Petitioner.

Vs.

Assessing Officer, Ward No. 1 (1), TDS, Nashik and Others. ..Respondents.

Mr. S.E. Dastur, Senior Advocate with Mr. Sanjiv M. Shah for the Petitioner.

Mr. B.M. Chatterjee Advocate for Respondents.

Mr. J. R. Dahad Respondent No.2 is present in person.

CORAM: DR. S. RADHAKRISHNAN AND V.C. DAGA,JJ.

DATED: 2nd APRIL, 2007.

P.C.:-

1. The learned Senior Counsel for the petitioner has tendered draft amendments to the petition. Same is taken on record and marked Exh."X" for identification. Leave granted. The amendment to be carried out on or before 4th April, 2007.

2. Heard the learned senior counsel for the petitioner and the learned counsel for the respondents. Respondent no.2 is present in person in this Court. We have perused the factual details which discloses a very shocking and sad state of affairs in the Income-tax Department.

3. In the above matter, the show cause notice dated 21.3.2007 was served on the petitioner on 22.3.2007 at 4.42 p.m. with the draft order dated 15.3.2007. The said order has raised several issues, for the first time, the petitioner had requested seeking grant of time to reply the show cause upto 29th March, 2007 by his letter dated 22.3.2007. The said letter of 22.3.2007 seeking time to file reply by the petitioner was rejected by the respondent no.1. Again a letter was written by the petitioner on 23.3.2007 seeking time to reply the said show

cause notice. It was also rejected on the very same day. On 26.3.2007 the present petition was filed at 11.10 a.m.in this Court.

4. On 23.3.2007 itself, without even affording an opportunity of hearing or even an opportunity to reply the said show cause notice, hurriedly an order was passed on 23.3.2007 under Sections 201 and 201 (1A) of the Income-tax Act, 1961 for the assessment year 2007-08 and it was served at 12.30 p.m. demanding amount of Rs.29,42,56,264/-. On 27th March, 2007 was a bank holiday on which day the respondent no. 2 passed a cryptic order without considering the detailed submissions made by the petitioner by an earlier letter dated 16.3.2007. The said order does not consider any of the contentions raised by the petitioner.

5. The learned senior counsel for the petitioner has brought to our notice that this Court in Mahindra and Mahindra Ltd. vs. Union of India, 1992 (59) E.L.T. 505 (Bom) in para 6 has held that no coercive action shall be taken till the expiry of appeal period against the said order is over.

6. The law as to how Income-tax Department should follow the parameters while passing orders on stay applications filed in pending appeals to the first appellate authority, laid down by this court in KEC International Ltd vs. B.R.Balakrishnan and others (59) E.L.T. 505 (Bom.) has also not been followed which warrants an action under the provision of Contempt of Court Act considering our past experience that the consistent approach of the Revenue is not to follow law laid down by this Court.

7. The learned senior counsel for the petitioner points out that in the present case appeal period will be over by 22.4.2007.

8. In the instant case, without even affording fair opportunity to reply show cause notice, hurriedly, Garnishee Notice was sent by respondent no.1 to the petitioner's banks and the bank accounts were frozen and the money also came to be recovered from the said banks on the same day i.e. on 29th March, 2007.

9. Entire action of the respondent Nos. 1 and 2 shocks our judicial conscience. Rule of law has been given a total go-bye and wilfully ignored. The Income-tax Authorities have acted in a high handed manner. The impugned action is prima facie ab-initio void.

10. On being repeatedly asked, the learned counsel for the respondents, has categorically answered, on instructions from the respondent no.2, that Revenue is not ready and willing to bring back the money; which was forcibly, in a high handed manner recovered, totally, ignoring the abovementioned two judgments of this Court.

11. Under the aforesaid facts and circumstances, we are constrained to direct respondent No.2 to bring back the said sum of Rs. 29,42,56,264/- and same shall be deposited with the Registrar General of this Court, latest by 4th of April, 2007.

12. The concerned Joint Commissioner Mr. J.R. Dahad, respondent no.2 herein, is personally present in this Court. It is made clear that this order has been pronounced loudly in the open court and the learned counsel for the respondents, Mr Chaturvedi, has fully understood the above order and Mr. V.R. Dahad has also fully understood the above order.

13. Issue notice to show cause to respondent no.1 as to why contempt action should not be initiated under the provisions of the Contempt of Court Act for prima facie knowingly and wilfully disobeying the aforesaid two judgments of our High Court. The Registrar General is directed to take steps to execute show cause notice as per rules.

14. Place this matter on 5th April, 2007, for admission and further reliefs.

15. Mr. Chatterjee, the learned counsel for the respondents, assures that he will orally communicate this order telephonically today itself even to respondent no.1.

(V.C. DAGA,J.) (DR.S. RADHAKRISHNAN,J.)