



CMP.No.21633 of 2023 in TC(A) No.487 of 2023

**C.M.P. No. 21633 of 2023**

**in**

**TC (A) No. 487 of 2023**

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**R. MAHADEVAN, J**

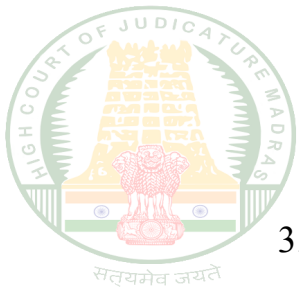
and

**MOHAMMED SHAFFIQ, J**

(Order of the court was made by R.Mahadevan, J.)

Challenging the order dated 13.09.2023 passed by the Income Tax Appellate Tribunal, 'D' Bench, Chennai, (in short, "the Tribunal") dismissing the appeal in ITA No.269/Chny/2022 relating to the Assessment Year 2017-18, the appellant / assessee has preferred the aforesaid Tax Case Appeal before this court.

2.Through the present miscellaneous petition, the appellant has sought for an order of interim stay of all the recovery proceedings initiated by the respondent, pursuant to the impugned order dated 13.09.2023 passed by the Tribunal and consequential notices dated 15.09.2023 issued by the Assistant Commissioner of Income Tax, Central Circle (1), Chennai under section 226(3) of the Income Tax Act, 1961 (hereinafter shortly referred to as "Act") on HDFC Bank Ltd and Bajaj Finance Ltd, pending disposal of the tax case appeal.



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3.The principal contention of the learned senior counsel appearing for the appellant / assessee is that the consideration paid by the appellant for purchase of its own shares in accordance with the Scheme, which is approved by this Court, is taxable only as capital gains in the hands of the shareholders under section 46A of the Act. Further, the subsequent amendment in section 115QA of the Act with effect from 01.06.2016 clearly indicates the legislative intent and taxation framework that purchase of its own shares under the Scheme by the appellant, was covered under section 46A of the Act. Without properly appreciating the same, the Tribunal erred in treating the consideration paid by the appellant for purchase of its own shares from the shareholders as dividend as per section 2(22) of the Act and thus, held that the appellant is liable to pay under section 115-O of the Act and accordingly, dismissed the appeal thereby confirming the orders passed by the CIT(A) and the Assessing Officer.

4.The learned senior counsel appearing for the appellant further submitted that consequent to the passing of the order impugned herein, the appellant is said to be liable to pay a dividend distribution tax of Rs.3301 crores (approximately) under section 115-O of the Act, subject to the outcome of the present appeal. Adding further, the learned senior counsel submitted that



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not only the tax amount of Rs.3301 crores allegedly payable by the appellant / assessee, but also an amount of Rs.1048 crores, is already in the safe custody of the Revenue, the details of which read as follows:

(i)The appellant has already deposited Rs.898 crores (which amounts to 27% of the alleged tax demand)

(ii)As per the order of the learned Judge dated 03.04.2018, the appellant has paid a sum of Rs.495 crores by way of cash to the respondent (which amounts to 15% of the alleged tax demand)

(iii)An amount of Rs.2956 crores stands deposited and invested in the form of fixed deposit receipts (which amounts to 86% of the alleged tax demand) with HDFC Bank Ltd and Bajaj Finance Ltd, on which the department has raised lien.

Thus, Rs.4349 crores is secured and collected by the Revenue as against the principal tax demand of Rs.3301 crores; and Rs.1048 crores in excess is also readily available with them.

5.Continuing further, the learned senior counsel for the appellant submitted that when the appellant prayed for an order of stay against the order passed by the CIT(A) dated 03.03.2022, the Tribunal has directed the appellant to pay Rs.475 crores, *vide* order dated 27.05.2022 in SP.No.36/Chny/2022,

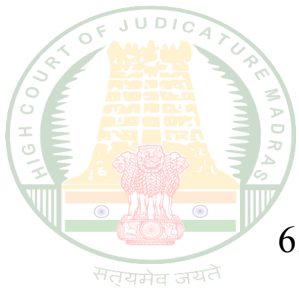


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against which, the appellant filed TCA No.147/2022, wherein, the learned

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Additional Solicitor General of India gave an undertaking that *status quo* with respect to payments / deposits made by the appellant, would be maintained until the disposal of the said TCA and the said appeal is still pending before this court. While so, the Tribunal by order dated 13.09.2023, dismissed the appeal preferred by the appellant / assessee. Immediately, on 15.09.2023, the respondent sent a communication, directing the appellant to pay the outstanding demand at the earliest. Simultaneously, they initiated the garnishee proceedings against the appellant, in which, notice under section 226(3) of the Act, came to be issued to the Branch Managers of Bajaj Finance Limited and HDFC Bank Ltd directing that the deposits amounting to Rs.2898 crores and any other monies that may be due, on which the Department has raised its lien, should be immediately encashed and the proceeds be remitted to the Department along with interest accrued thereon, failing which the banks will be deemed to be assessee-in-default and the proceedings for realization of the amounts towards arrears of tax will be initiated against the respective banks. Therefore, the learned senior counsel prayed for appropriate orders to lift the lien and release the fixed deposits, so as to enable the appellant / assessee to utilise the funds for its business operation, besides protecting them from the recovery proceedings.

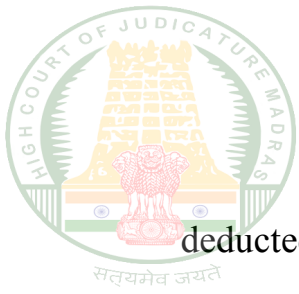


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6. On the other hand, the learned senior counsel appearing for the respondent / Revenue submitted that in the assessment year 2013-14, in order to avoid payment of tax, the appellant had distributed its accumulated profits through buyback of shares, thereby triggering section 77A of the Companies Act, 1956 and the same was done just prior to the introduction of section 115QA of the Act, being brought into force. It is further submitted that the provisions of section 46A of the Act are not applicable to all forms of buyback, and thus, the shareholders are liable to pay capital gains tax on purchase of own shares in accordance with law. Thus, according to the learned senior counsel, the conditions of section 115-O r/w section 2(22) of the Act are satisfied and hence, the authorities have rightly invoked the same and levied tax on the appellant, which was affirmed by the Tribunal, by the order impugned herein.

7. It is also submitted by the learned senior counsel appearing for the respondent that the tax liability payable by the appellant is around Rs.9403,09,59,478/- including interest u/s.220(2) and penalty u/s.271C of the Act. Except the payment of Rs.495 crores, in compliance with the order of the learned Judge in WP.No.7354 of 2018 dated 03.04.2018, the appellant did not make any payment of tax till date. It is further submitted that the TDS



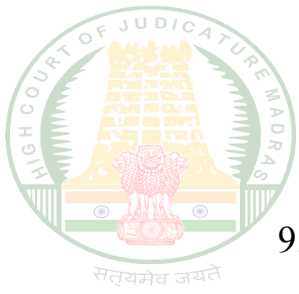
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deducted and remitted to the credit of the other entities can never be conceived

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as 'security' much less as available with the department and the same is contrary to legislative scheme contained in section 199 of the Act. That apart, the shareholders have offered income under the head capital gains in their respective returns of income for the AY 2017-18 and have absorbed the TDS credit towards their tax liability and the same have already been processed. That apart, the fixed deposit of Rs.2956 crores would not be sufficient to meet the existing tax liability of Rs.4358 crores and the corresponding interest liability of Rs.1743 crores aggregating to Rs.6101 crores; and as the demand has now been confirmed by the appellate authorities, the Revenue is entitled to liquidate the security and realise the existing tax liabilities. However, they have not taken any recovery action and the lien was created on the fixed deposits only for the purpose of security. Stating so, the learned senior counsel sought to protect the interest of the Revenue, while passing any order in this petition.

8.Heard the rival submissions and perused the materials available on record.



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9. Admittedly, the order of assessment dated 29.04.2020 passed under section 115-O of the Act, by the assessing officer relating to the assessment year in question viz. 2017-18, has been affirmed by the two appellate authorities and the same is put to challenge in the present appeal, at the instance of the appellant / assessee, with the following substantial questions of law:

*(i) Whether in the facts and circumstances of the case, the Hon'ble Tribunal was right in holding that the Scheme as sanctioned by this Hon'ble High Court as purchase of shares is one for reduction of capital, insofar as it negates the sanctity of the Scheme as sanctioned by this Hon'ble High Court?*

*(ii) Whether in the facts and circumstances of the case, the Hon'ble Tribunal was right in holding that the consideration paid by the appellant for purchase of its own shares in accordance with the Scheme sanctioned by this Hon'ble High Court in terms of section 391-393 of the Companies Act, 1956 amounts to distribution of accumulated profits or capital reduction, attracting section 2(22) of the Income Tax Act, 1961?*

*(iii) Whether in the facts and circumstances of the case, and more so, in view of the order of the Hon'ble Supreme Court in Civil Appeal No.1992 of 2020 dated 04.03.2020, it is open to the Department to contend that the Scheme of Arrangement approved by this Hon'ble Court by order dt. 18.04.2016 in C.P.No.102/16 is a colourable device or a sham, when that was never mentioned in the communication dated 22.03.2018?*

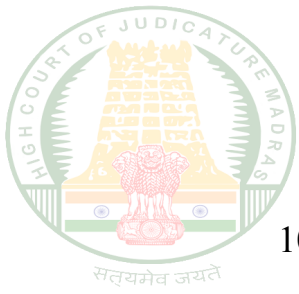
*(iv) Whether in the facts and circumstances of the case, the Hon'ble Tribunal was right in holding that a purchase of shares under section 391 to section 393 of the Companies Act, 1956 is taxable in the hands of the appellant, although it is taxable only as capital gains in the hands of the shareholder under section 46A of the Act?*

*(v) Whether in the facts and circumstances of the case, the Hon'ble Tribunal was correct in law in holding that buyback of shares not covered under section 77A of the Companies Act, 1956/ section 68 of the Companies Act, 2013 amounts to dividend under section 2(22)(a)/ 2(22) (d) of the Act?*

*(vi) Whether in the facts and circumstances of the case, the finding of the Hon'ble Tribunal that the Scheme approved by the Hon'ble High Court is a colourable device intended to evade legitimate tax dues and lacks commercial purpose, not perverse, particularly when the Scheme was sanctioned by the Hon'ble High Court after considering the no objection report filed by the Central Government?*

*(vii) Whether in the facts and circumstances of the case, the findings of*

*the Tribunal are perverse and contrary to facts and law?"*



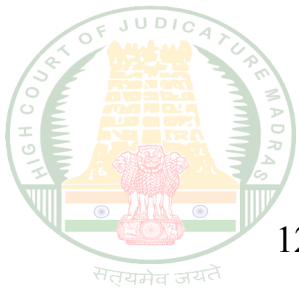
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10.Both the appellant and the Revenue made extensive arguments and also filed memos dated 15.11.2023 and 25.09.2023 respectively, in respect of the outstanding tax demand. According to the appellant, they have already paid a sum of Rs.495 crores, besides a sum of Rs.898.01 crores towards TDS remittance, available with the department. While so, the respondent has raised lien over the fixed deposits amounting to Rs.2956.85 crores, due to which, the business operation of the appellant company would be paralysed. During the course of hearing, the learned senior counsel for the appellant submitted that without prejudice to their contentions, the appellant in order to show its *bona fide*, is inclined to pay the base demand by way of cash or encashing the fixed deposits and remit the same to the respondent, besides furnishing property security, and on doing the same, the respondent may be directed to release the lien created on the bank fixed deposits, so as to enable the appellant to run their business operation without any hindrance.

11.On the other hand, the respondent stated that as per the order of the appellate authorities, the appellant /assessee is liable to pay tax demanded by the Assessing Officer and hence, the outstanding demand raised against them, needs to be secured, to protect the interest of the Revenue. It is also submitted that the financial difficulty cited on the side of the appellant has no merit, as their current assets as on 31.03.2022 are around Rs.21,644 crores.





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12. Considering the totality of the facts and circumstances of the case

and having regard to the submissions made by the learned counsel appearing on either side, this court, in the interest of both the parties, is inclined to grant an order of interim stay, in the following terms:

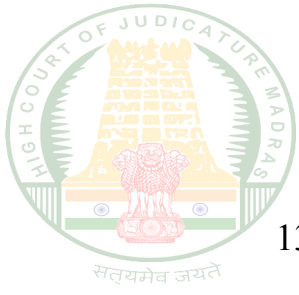
(i) The appellant / assessee shall make a payment of Rs.1500 crores in cash or give a letter to the Bank to remit Rs.1500 crores (Rupees One Thousand and Five Hundred Crores) to the credit of the respondent from the fixed deposits available, and furnish property security for the balance tax liability with interest and penalty, to the respondent, within a period of four weeks from the date of receipt of a copy of this order.

(ii) On such payment and deposit of title deeds pertaining to the property, the respondent shall release the lien on the remaining fixed deposits lying in the Banks.

(iii) In the event of default on the part of the appellant in complying with the aforesaid conditions, this order shall stand vacated automatically, without any further reference to this court; and it is also open to the Revenue to recover the tax liability from the appellant in the manner known to law.

(iv) The substantial questions of law raised herein shall be considered at the time of final hearing of the appeal.

(v) The memos filed by the respective parties, are taken on record.



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13. With the aforesaid directions and observations, this miscellaneous

petition stands disposed of.

(R.M.D., J) (M.S.Q., J)

21.12.2023

Index : Yes/No

Neutral Citation : Yes/No

Speaking/Non-Speaking Order

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and  
**MOHAMMED SHAFFIQ, J**

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