

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2014

CORAM:  
THE HONOURABLE MR. JUSTICE V. DHANAPALAN

W.P.No.373 of 2014

Dishnet Wireless Limited,  
rep. by its Authorized Signatory,  
5th Floor, Spencer Plaza,  
No.769, Anna Salai,  
Chennai 600 002.

... Petitioner

vs.

1. The Assistant Commissioner of Income Tax,  
TDS Circle-I, Room No.711, 7th Floor,  
Wanaparthy Block, 121 M.G. Salai,  
Nungambakkam, Chennai 600 034.
2. The Deputy Commissioner of Income Tax,  
TDS Circle-I, Room No.711, 7th Floor,  
Wanaparthy Block, 121 M.G. Salai,  
Nungambakkam, Chennai 600 034.
3. The Commissioner of Income Tax (Appeals)-VII,  
121, M.G. Salai, Nungambakkam,  
Chennai 600 034.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus calling for the records of the 1st respondent comprised in the impugned demand notice of the 1st respondent bearing Ref.ACIT/TDS.CIR.I./DISHNET/2013-14 dated 02.01.2014 and to quash the same as wholly arbitrary, illegal and

ultra vires the provisions of the Income Tax Act, 1961 and to consequently forbear the respondents from taking any coercive steps towards recovery of the alleged liability pursuant to the order bearing Ref.ITA No.330-339/13-14 dated 30.12.2013 till the expiry of the period of limitation for filing an appeal against the said order under the provisions of the Income Tax Act, 1961.

For Petitioner : Mr.Sathish Parasaran

For Respondents : Mr.T.Pramod Kumar Chopda (I.T.)

### **ORDER**

By consent of the learned counsel on either side, this Writ Petition is taken up for final disposal at the stage of admission itself.

2. Heard Mr.Satish Parasaran, learned counsel for the petitioner and Mr.T.Pramod Kumar Chopda, learned counsel appearing for the respondents.

3. Challenging the impugned demand notice of the 1st respondent vide Ref.ACIT/TDS.CIR.I./DISHNET/2013-14 dated 02.01.2014, seeking to quash the same and for a consequential direction to forbear the respondents from taking any coercive steps towards recovery of the

alleged liability pursuant to the order bearing Ref.ITA No.330-339/13-14 dated 30.12.2013 till the expiry of the period of limitation for filing an appeal against the said order under the provisions of the Income Tax Act, 1961, the petitioner has come up with this Writ Petition.

4. In the impugned order, it is stated that the appeal application filed by the petitioner/assessee with the Commissioner of Income Tax (Appeals)-VII, has been disposed of on 30.12.2013, with a direction to the petitioner to pay the outstanding amount of Rs.46,18,15,768/- immediately and produce the relevant challan, either personally or through their authorised representative, so that they may be given due credit for the same. Apprehending that there may be coercive action for recovering that amount, the petitioner is before this Court.

5. Learned counsel for the petitioner pointed out that though the time limit of 60 days to prefer an appeal from the date of passing of the impugned order, i.e. from 30.12.2013 is available to the petitioner, without waiting for the same, the respondents have hastily proceeded to send a reminder to the petitioner on 02.01.2014 informing him of the immediate payment of the outstanding amount. Therefore, the impugned

order cannot be allowed to stand against the petitioner.

6. Refuting the said submission, learned counsel appearing for the Revenue would submit that when the original authority has passed the order, it is not incumbent on the Revenue authorities to keep the matter pending till the petitioner moves the Appellate forum. Therefore, mere intimation to the petitioner to pay the outstanding amount cannot be questioned in law.

7. It is not in dispute that the original authority passed the assessment order on 30.12.2013, as against which, further appeal lies to the Income Tax Appellate Tribunal under Section 253 of the Act and the time for moving the Tribunal is 60 days from the date of receipt of a copy of the order. As the appellate remedy is available to the petitioner, it could be accepted and the authority may thereafter proceed with the matter. However, in the absence of any legal impediment, the respondents have intimated recovery proceedings against the petitioner, when there is reasonable time for him to prefer an appeal.

8. In view of the above, respondents are directed to not to take any coercive steps for recovery against the petitioner, till the appeal time is exhausted. Thereafter, the respondents are at liberty to act in accordance with law for recovery of the amount as per the order of the appellate authority.

With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected M.P.Nos.1 to 3 are closed.

Index : Yes  
Internet : Yes

07.01.2014

abe

To :

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V.DHANAPALAN,J.

*abe*

Order in  
W.P.No.373 of 2014

Dated: 07.01.2014