IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 919 OF 2015

ACC Limited	**}**	**Petitioner**
versus		
Deputy Commissioner of Income Tax and Ors.	**}**	**Respondents**

Mr. J. D.Mistri-Senior Advocate with Mr.Nitesh Joshi i/b. M/s. Mint and Confreres for the Petitioner.

Mr. Suresh Kumar for the Respondents.

CORAM :- S. C. DHARMADHIKARI & A. K. MENON, JJ.

DATED :- MARCH 30, 2015

P.C. :-

This Writ Petition under Article 226 of the Constitution India is by M/s. ACC Limited and on the apprehension that the order sheet noting at Annexure 'P' at page 416 of the paper book would visit them with adverse consequences during the course of reassessment proceedings.

2) Mr. Mistri-learned Senior Counsel appearing for the Petitioner does not dispute that a notice under section 148 of the Income Tax Act, 1961 was duly served and in pursuance of which the concerned officer in the department has initiated further steps. Equally,

the Assessee/Petitioner before us has also responded and in answer to several questions and queries, furnished the details. The reassessment proceedings are yet to conclude.

3) However, Mr. Mistri would submit that the details that are sought from the Petitioners and deliberately at the last minute on 26th March, 2015 are pertaining to deductions under section 80IA(4) of the Income Tax Act, 1961 on the rail system. That was in issue and squarely dealt with by the Assessing Officer during regular assessment proceedings. He passed an order, which was not wholly adverse to the interest of the Revenue, but on the computation, the Petitioner was not satisfied. It has challenged the order passed by the officer denying the deductions and in the sum claimed. The Appeal is pending. During the course of and pending this Appeal and in reassessment proceedings, but for distinct reasons, now the Assessing Officer is likely to re-visit the same deduction and pass an order.

4) Our attention is invited to the third proviso to section 147 of the Income Tax Act, 1961 (proviso which has been brought in w.e.f. 1st April, 1008 by Finance Act, 2008). Our attention was also invited to the order passed by the Assessing Officer in the substantive/regular proceeding. It is therefore submitted by Mr. Mistri that within a short time it will not be possible for the Petitioner to resist completely this

proposed step of the Assessing Officer. In the event an adverse order is passed and reopening or revisiting this deduction, then, the Petitioner shall suffer serious consequences. That would affect the operations of rail system. The deduction is legitimately claimed and is within the parameters of law. Therefore, this Writ Petition be entertained. Mr.Mistri submits that even if there is no order made, this is not an attempt to pre-empt any further legitimate course, but only to safeguard against an adverse finding and conclusion which may possibly be reached on the issue as emerging from the order note sheet.

5) Mr. Suresh Kumar appearing for the Respondents on the other hand would submit that the Writ Petition is wholly premature. Today, the Petitioner cannot presume that an adverse order will be passed. Further, there are remedies in the form of Appeals and which can be availed of by the Petitioner in the event any adverse finding is recorded or the deduction is revisited as apprehended. In such proceedings, they can seek protective orders and directions. This Court should not interfere at this stage and on the spacious presumption or apprehension as noted above. Our attention is also invited to *Explanation 3* which has been inserted by Finance Act, 2 of 2009 with retrospective effect from 1st April, 1989.

6) After having noted the rival contentions, we see some force in the stand of the Revenue. There is no order as yet passed by the Assessing Officer and in pursuance of the notice to reassess the income allegedly escaping assessment and chargeable to tax. The Assessing Officer has yet to make up his mind. He has only sought a clarification and based, as apprehended by the Petitioner, on some general circulars. In the event any order is passed on conclusion of the reassessment proceedings and if it is adverse to the interest of the Petitioner, the Petitioner can file a Appeal against that order and seek a protective relief. We do not think that this Court should proceed on the footing and at this stage that the deduction will be revisited. In such circumstances, we dispose of this Writ Petition with a direction that the Assessing Officer shall take into consideration the objections that have been raised and forming part of this order and set out in the Writ Petition as resistance and objections of the Petitioner to reopening or revisiting the deduction under section 80IA(4) of the Income Tax Act, 1961. All pleas including those raised in this Writ Petition shall be considered by the Assessing Officer as if they have been raised in a personal hearing. He shall take them into account and pass an order giving reasons on conclusion on the pending reassessment proceedings.

7) We clarify that we have not expressed any opinion on the rival contentions. In the event a final order is passed in the reassessment proceedings and which is in any way prejudicial to the interest of the Petitioner including on the subject deduction, then, while challenging it, the Petitioner can raise necessary pleas. To enable the Petitioner to avail of the remedy and to seek interim protective orders, we direct that in the event an order passed in the reassessment proceedings is in any way prejudicial to the Petitioner, particularly on the subject deduction, the Revenue shall not act in furtherance thereof for a period of four weeks from the date of its communication to the Petitioner.

8) With the aforesaid directions, the Writ Petition is disposed of.

(A.K.MENON, J.) **(S.C.DHARMADHIKARI, J.)**