IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 30.08.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.6699 of 2014 &

M.P.Nos.1,2 and 3 of 2014

M/s.PPN Power Generating Company Pvt. Ltd.,
Rep. by its Managing Director,
P.Karthik Anand Reddy,
IIIrd Floor, Jhaver Plaza,
1A, Nungambakkam High Road,
Chennai-600 034. .. Petitioner

Versus

1.The Commissioner of Income Tax,
Company Circle (V),
Aayakar Bhavan, 121, Uthamar Gandhi Salai,
Chennai-600 034.

2.The Assistant Commissioner of Income Tax,
Company Circle V (II),
121,Uthamar Gandhi Salai,
Chennai-600 034. .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records of the second respondent comprised in his impugned order bearing reference in PAN AABCP 8131D, dated 28.02.2014 issued under Section 226(3) of the Act and to quash the same as being arbitrary, illegal and passed without authority of law and application of mind and consequently direct the second respondent to comply with the order of the first respondent dated 28.02.2014 in C.No.23(6)/CO. R./CIT/V/2013-14, and verify the claim of the petitioner pertaining to its stand that the income proposed to be taxed for the Assessment year 2009-10 was offered for tax in the subsequent Assessment year and tax paid at higher rates.

For Petitioner : Mr.Rahul Balaji
For Respondents : Mr.T.Pramod Kumar Chopda
Standing Counsel

O R D E R

Heard Mr.Rahul Balaji, learned counsel appearing for the petitioner and Mr.T.Pramod Kumar Chopda, learned Standing Counsel appearing for the respondents.

2. In this Writ Petition, the petitioner challenges a notice issued by the second respondent under Section 226(3) of the Income Tax Act, 1961, as being arbitrary and illegal and to direct the second respondent to comply with the order passed by the first respondent, dated 28.02.2014 in the stay petition filed by the petitioner against the demand for the Assessment year 2009-10.

3. It is seen that the stay petition filed by the petitioner was rejected by the first respondent, by an order dated 28.02.2014 and on the same date, the impugned notice has been issued. The petitioner seeks to take advantage of certain observations made by the first respondent while rejecting the stay petition and the observation made in the last paragraph of the order dated 28.02.2014 is to the following effect:-

> "The arguments of the assessee is without any merit and is rejected. Firstly, the Assessing Officer has to verify the claim of the assessee. Secondly, the assessee has to file a revised return to claim any adjustment. These cannot be the subject matter for deciding the stay petition. Hence, the stay petition is hereby rejected."

4. The petitioner's case is that in terms of the said observation, the Assessing officer has to verify the claim of the assessee. Therefore, it is stated that it is the duty of the Assessing Officer to do so and issuing a notice under Section 226(3) of the Income Tax Act, 1961, on the same date is unreasonable and arbitrary. However, even before approaching this Court, the notice under Section 226(3) of the Act had been given effect and the amount has been withdrawn by the Revenue, from the petitioner's bank. Therefore, as on date, the challenge to the impugned proceedings is academic and the second respondent has filed an elaborate counter affidavit setting out all the facts and circumstances of the case. However, there need not be any necessity to go into all those aspects due to subsequent event that the money has already been recovered by

the Department. However, it does not mean that the petitioner is left without any remedy, as the petitioner is always entitled to approach the Assessing Officer for necessary relief, if they choose to do so. If any such request is made by the petitioner, the Assessing officer is bound to proceed, in accordance with law.

5. Accordingly, the Writ Petition is closed, as the challenge to the impugned proceedings has become academic and it is open to the petitioner to approach the Assessing Officer, for appropriate relief, which shall be considered in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

r n s

To

1.The Commissioner of Income Tax,
Company Circle (V),
Aayakar Bhavan, 121, Uthamar Gandhi Salai,
Chennai-600 034.

2.The Assistant Commissioner of Income Tax,
Company Circle V (II),
121,Uthamar Gandhi Salai,
Chennai-600 034.

+1 CC to Mr. T. Pramodkumar Chopda , Advocate Sr.No.49018
+1 CC to Mr. Satish Parasaran, Advocate Sr.No.49173

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AD (CO)
MD : 20/09/2016