IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.03.2017
CORAM:

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P. No. 44202 of 2016

M/s. Surabi Bullion,
Represented by its Partner Shri K.Vasudevan,
405, Surya Complex,
Big Bazaar Street,
Coimbatore 641 001. ..Petitioner

Vs.

1.The Principal Commissioner of Income Tax
Central -2, Chennai -34.

2.The Joint Commissioner of Income Tax
Central Range,
No.63, Race course Road,
Coimbatore-641 018.

3.The Assistant Commissioner of Income Tax
Central Circle -1, Coimbatore. .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the 1st Respondent to release a sum of Rs.1,55,88,866/-(Rupees One crore fifty five lakhs eighty eight thousand eight hundred and sixty six only) being the Excess/balance sum after all adjustments lying with the Income Tax Department[PD account] along with interest at the rate of 18% from 31st July 2014 to the Petitioner whose PAN No is ABRFS7669H within a time frame as deemed fit by this court.

For Petitioner : Mr.P.J.Rishikesh

For Respondents : Mr.T.Pramod Kumar Chopda
Senior Standing Counsel (IT)

O R D E R

This writ petition is filed seeking for a mandamus to the first respondent to release a sum of Rs.1,55,88,866/- being the excess/balance sum, after adjustments, lying with the Income Tax Department (PD) account along with interest at the rate of 18% from 31st July 2014.

2.The case of the petitioner is as follows:

On 24.09.2012, there was a search conducted by the Income Tax Department under section 132 of the Income Tax Act, 1961 and they seized cash of Rs.4,45,00,000/-. Thereafter, the jurisdictional Assessing Officer passed an order of assessment dated 31.07.2014 and consequence of such assessment, the tax liability payable was determined as Rs.1,52,19,154/- with penalty under Section 271 AAB determined at Rs.1,36,91,980/-. Thus, the tax and penalty due from the assessee can be adjusted with cash deposit by way of seizure of Rs.4,45,00,000/- and the balance sum of Rs.1,55,88,866/- lying with the respondent is to be returned to the petitioner along with interest as sought for in the writ petition.

3.The first respondent has filed a counter affidavit wherein it is stated that in pursuant to the order of assessment, the Commissioner passed an order under section 263 of the said Act, directing the Assessing Officer to redo the assessment. Such order of the Commissioner under section 263 was made on 15.07.2016. It is further stated that the petitioner, had in fact, participated in such proceedings and therefore, they are fully aware of the same. Consequent upon the order passed by the Commissioner under Section 263, the Assessment Officer has passed the fresh order of assessment on 13.02.2017, served on the petitioner on 17.02.2017. Therefore, it is contended that the prayer sought for in this writ petition cannot be considered at present.

4.Learned counsel appearing for the petitioner submitted that in view of the subsequent developments that had taken place by passing the order by the Commissioner under Section 263 and consequent order of assessment passed by the Assessing Officer, the writ petition may be closed by granting liberty to the petitioner to agitate the matter before the appropriate forum in the manner known to law. Granting such liberty to the petitioner, this writ petition is closed accordingly. Needless to say that any interim order passed by this court during the pendency of the writ petition and any observation made therein, which is subject to the result of the writ petition, do not have any bearing after the disposal of this writ petition, as it is also seen that the observation made in the interim order dated 23.12.2016 was without having the knowledge of the order passed by the Commissioner under Section 263. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vri

To

1.The Principal Commissioner of Income Tax
Central -2, Chennai -34.

2.The Joint Commissioner of Income Tax
Central Range,
No.63, Race course Road,
Coimbatore-641 018.

3.The Assistant Commissioner of Income Tax
Central Circle -1, Coimbatore.

+1cc to Mr.Rishikesh, Advocate, S.R.No.17429
+1cc to Mr.Pramod kumar Chopla, Advocate, S.R.No.17761

W.P. No. 44202 of 2016

RSK(CO)
RS(07/04/2017)