IN THE HIGH COURT OF JUDICATURE AT MADRAS

(IN INSOLVENCY)

FRIDAY, THE 6TH DAY OF JULY 2018

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

APPLN. NOS.113, 115, 117 AND 119 OF 2018
IN

APPLN.NOS. 288 TO 291 of 2017
in
I.P. No.77 of 2002

I.P. No.77 of 2002:-

In the matter of the Presidency Towns Insolvency Act, III of 1909 and In the matter of T.L.V.Estates and others ... Debtors

Jayesh N. Parekh,
residing at No.28,
Mookkathal Street,
Chennai-600 007. ... Petitioning Creditor

-Versus-

1. M/s.T.L.V.Estates,
carrying on business at
No.142/9, Purasawakkam High Road,
Akshaya Flat Basement, Chennai-600 010.

2. Mrs.T.R.Bhuvaneswari,
residing at No.142/9, Purasawakkam High Road,
Akshaya Flat Basement, Chennai-600 010.

3. Murugan,
residing at No.G-103, 9th Street,
Behind Chinthamani, Anna Nagar East,
Chennai.

4. T.R.Srinivasan,
residing at No.G-103, 9th Street,
Behind Chinthamani,
Anna Nagar East, Chennai. ... Debtors

(2nd Debtor representing herself and the estate of the deceased Ranganathan and Debtors 3 & 4 representing the estate of the deceased Ranganathan)

APPLN.NOS.288 TO 291 of 2017

The Official Assignee,
High Court, Madras. ... Applicant

-vs-

1.Jayesh N. Parekh,
residing at No.28,
Mookkathal Street,
Chennai-600 007. ... 1st Respondent/ Petitioning Creditor

2.T.R.Bhuvaneswari,
180-A, First Floor, 3rd Main Road,
Natesan Nagar,
Virugambakkam,
Chennai 600 092. ... 2nd Respondent/Insolvent

3.The Deputy Commissioner of Income Tax,
Range-9, Kannammai Building,
Mount Road, Chennai 600 006. ... 3rd Respondent

Application No.288 of 2017 praying that this Hon'ble Court be pleased to direct the Official Assignee to file a Revised Statement of Total Income for the Assessment Year 2011-12 and claim Refund in the sum of Rs.70,09,383/- which is to be adjusted with the differential tax payable for the Assessment year 2012-13 in the sum of Rs.1,15,82,730/- in PA Number CJLPB1177R.

Application No.289 of 2017 praying that this Hon'ble Court be pleased to direct the 3rd respondent to accept the Revised Statement of Total Income for the Assessment Year 2011-12 and complete the Assessment in accordance with law based on the Revised Statement of Total income filed for the Assessment year 2011-12.

Application No.290 of 2017 praying that this Hon'ble Court be pleased to direct the Official Assignee to file a Revised Statement of Total income for the Assessment year 2012-13 and pay the differential tax in the sum of Rs.45,74,341/- after adjusting the Refund in the sum of

Rs.70,09,383/- pertaining to the Assessment year 2011-12.

Application No.291 of 2017 praying that this Hon'ble Court be pleased to direct the 3rd respondent to accept the Revised Statement of Total Income for the Assessment Year 2012-13 and complete the Assessment in accordance with law based on the Revised Statement of Total Income filed for the Assessment year 2012-13.

APPLN.NOS.113, 115, 117 & 119 of 2018

T.R.Bhuvaneswari,
180-A, First Floor, 3rd Main Road,
Natesan Nagar,
Virugambakkam,
Chennai 600 092. ... Applicant

-vs-

1.The Official Assignee,
High Court, Madras. ... 1st Respondent

2.Jayesh N. Parekh,
No.28, Mookkathal Street,
Chennai-600 007. ... 2nd Respondent/
Petitioning Creditor

3.The Deputy Commissioner of Income Tax,
Range-9, Kannammai Building,
Mount Road, Chennai 600 006. ... 3rd Respondent

Application No.113 of 2018 praying that this Hon'ble Court be pleased to review the order dated 05.03.2008 passed in Appln.No.288 of 2017 in I.P.No.77 of 2002 and consequently direct the 1st respondent to provide the applicant with copies of the accounts computed by the 1st respondent to ascertain the merits.

Application No.115 of 2018 praying that this Hon'ble Court be pleased to review the order dated

05.03.2008 passed in Appln.No.289 of 2017 in I.P.No.77 of 2002 and consequently direct the 1st respondent to provide the applicant with copies of the accounts computed by the 1st respondent to ascertain the merits.

Application No.117 of 2018 praying that this Hon'ble Court be pleased to review the order dated 05.03.2008 passed in Appln.No.290 of 2017 in I.P.No.77 of 2002 and consequently direct the 1st respondent to provide the applicant with copies of the accounts computed by the 1st respondent to ascertain the merits.

Application No.119 of 2018 praying that this Hon'ble Court be pleased to review the order dated 05.03.2008 passed in Appln.No.291 of 2017 in I.P.No.77 of 2002 and consequently direct the 1st respondent to provide the applicant with copies of the accounts computed by the 1st respondent to ascertain the merits.

These above applications coming on this day before this Court for hearing in the presence of Mr.P.L.Narayanan, advocate for the applicant in all applications; Mr.J.Balachander, advocate for the Official Assignee/1st Respondent and Mr.T.Srikanth, advocate for the 2nd respondent/petitioning creditor, Mr.M.Swaminathan, advocate for the 3rd respondent in all applications; and upon reading the Judges Summons and common affidavit of T.R.Bhuvaneswari, filed in all applications and the order of this Court dated 05.03.2018 made in Appln.Nos.288 to 291 of 2017,

THE COURT MADE THE FOLLOWING ORDER :

By a common order dated 05.03.2018 passed in Application No.288 to 291 of 2017, I had directed the Official Assignee to file a Revised Statement of total income for the Assessment year 2011-12 and claim refund in the sum of Rs.70,09,383/- which is to be adjusted with the differential tax payable for the Assessment year 2012-13 in the sum of Rs.1,15,82,730/-.

2. The 3rd respondent viz., Deputy Commissioner of Income Tax was also directed to accept the revised statement of total income for the Assessment year 2011-12 and complete the Assessment in accordance with law based on the Revised Statement of total income filed for the Assessment year 2011-12. A similar direction was issued in respect of Assessment year 2012-13 also.

3. Application Nos.113, 115, 117 and 119 of 2018 have been filed by the Insolvent seeking review of the order dated 05.03.2018. The main ground on which the review is sought for is that there is no provision under the Income Tax Act for filing a Revised Statement and to enable the Department viz., Deputy Commissioner of Income Tax to complete the assessment based on the Revised Statement.

4. Mr.M.Swaminathan, learned Standing Counsel for the Department would submit that the assessment for the

years 2008-09 to 2015-16 were completed on 10.03.2016 itself under Section 144 of the Act r/w. Section 147. Neither the Official Assignee nor the Insolvent had challenged the same by way of an appeal. The suo-moto power of the Commissioner to entertain the revision which was available under Section 263 cannot also be invoked as on date, since two years time allowed under Section 263(2) was expired on 21.03.2018.

5. Mr.M.Swaminathan, would also point out that there is no provision in the Income Tax Act which enables the Assessee or a representative Assessee to file a Revised Statement of income and seek reassessment on the basis of such Revised Statement. While conceding the fact that it is open to the Official Assignee or the Insolvent to file an appeal against the assessment made under Section 144, Mr.M.Swaminathan would submit that such filing of Revised Statements and seeking reassessment is foreign to the provisions of Income Tax Act. It is therefore necessary that the order dated 05.03.2018 is reviewed.

6. I have heard Mr.PL.Narayanan, learned counsel appearing for the applicant in the Review Applications also. It is also conceded by the learned counsel appearing for all the parties that the assessment relating to the year 2011-12 cannot at all be reopened as of today, since the six years period contemplated under Section 148 of the Income Tax Act has also expired. The prayer for introducing the revised

statement for the assessment year 2012-13 is consequential and the same cannot also be revoked.

7. In view of the aforesaid legal position, I am of the considered view that the order dated 05.03.2018 needs to be reviewed. Hence, the Review Applications are allowed, the order dated 05.03.2018 is recalled and the Applications in A.No.288 of 2017 to 291 of 2017 will stand dismissed.

WITNESS, THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE 6TH DAY OF JULY 2018.

sd/-

ASSISTANT REGISTRAR(O.S.I)

//CERTIFIED TO BE TRUE COPY//
DATED THIS THE DAY OF 2018

MANAGER

INSOLVENCY OFFICE

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

cns 16.07.2018

HIGH COURT, MADRAS

APPLN.NOS.113, 115, 117 &
119 OF 2018

IN

APPLN.NOS.288 TO 291 OF 2017

IN

I.P.NO.77 OF 2002

THE HON'BLE MR.JUSTICE

R.SUBRAMANIAN

ORDER DATED:06.07.2018

FOR APPROVAL:17.07.2018

APPROVED ON :18.07.2018

COPY TO:-

1.THE OFFICIAL ASSIGNEE
HIGH COURT, MADRAS.

2.THE DEPUTY COMMISSIONER OF
INCOME TAX,
RANGE-9,KANNAMMAI BUILDING
MOUNT ROAD,CHENNAI 600 006