IN THE HIGH COURT OF JUDICATURE AT MADRAS

(IN INSOLVENCY)

THURSDAY, THE 22ND DAY OF JANUARY 2018

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

APPLN.NO.133 OF 2017

IN

IP.NO.45 OF 2004

In the matter of the Presidency Towns Insolvency Act, III of 1909 and In the matter of D. Fathi Jesu Rajan ... Petitioner / Debtor

I.P.NO.45 OF 2004

D. Fathi Jesu Rajan
No. 322, Sasthri Nagar,
Anna Salai, Vyasarpadi,
Chennai – 39. ... Petitioner / Debtor

APPLN.NO. 133 OF 2017

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

-Vs-

1.D. Fathi Jesu Rajan
No. 322, Sasthri Nagar,
Anna Salai, Vyasarpadi,
Chennai – 39. ... 1st Respondent/Insolvent

2.The Asst.Commissioner of Income Tax,
Range-4, Kannammai Building,
No.611, Mount Road, Chennai 6 ... 2nd Respondent

Application praying that this Hon'ble Court be pleased to direct the Official Assignee to file the Returns of Income for the Assessment years 2010-2011 in the case of D.Fathi Jesu Rajan(insolvent) and pay the taxes including disputed taxes without interest by way of cheque/draft drawn in favour of the Jurisdictional Assessing Officer (2nd respondent).

The above application coming on this day before this court for hearing in the presence of Mr.J.Balachander, advocate for the Official Assignee, the applicant herein and of Mr.J.Balagopal, Advocate **f**or the 1st Respondent / Insolvent and Mr.Vasanthakumar, Deputy Offcial Assignee herein; Mr.T.Ravikumar, Standing Counsel for 2nd respondent (for IT Department) and upon reading the judges Summon and report of the Official Assignee filed herein,

THE COURT MADE THE FOLLOWING ORDER :

The Official Assignee will follow the procedure prescribed in my order dated 12.12.2017 in A.No.249 of 2017 in I.P.No.6 of 2004. In view of the same, the said order reads as follows:

> "2.The Assistant Commissioner of Income Tax, Non Corporate Range-3, Chennai, has filed a Memo of Objection to the report of the Official Assignee filed in all these applications and in paragraph 4 of the said report as stated:
>
> > *"I State that with regard to the averments made in paras 4 of the Additional report filed it is submitted that the Income escaping assessment made under Sections 147/148 of the Income Tax Act 1961, cannot be re-opened as on date for the assessment year 2010-2011 as the time limit to re-open the assessment got over by 31.03.2017, which is indicated in Section 149 of the Income Tax Act".*

3.In view of the same, all applications seeking directions to enable the Official Assignee to file a return or to condone the delay in filing the returns for the assessment years 2010-2011 or the previous years are closed as no further orders necessary. The Department has accepted that it cannot collect the tax based on the income derived during the said period.

4.Insofar as the prayer that relates to acceptance of manual returns without PAN Number, the objection filed by the Assistant Commissioner of Income Tax, Non Corporate Range-3, Chennai, reads as follows:

> "The Official Assignee is also required to obtain a fresh PAN for filing return of income if the insolvent does not have a PAN at present".

Under Sub Section 2 of Section 139 (A) of the Income Tax Act, the Assessing Officer has got the power to allot a Permanent Account Number to any other person (Whether any tax is payable or not) in the manner and in accordance with the procedure as may be prescribed.

5.Difficulties seem to arise when the Nodal Agencies appointed for issue of PAN Number are approached for such issue of PAN Number by the Official Assignee. They invariably insist on photographs of the assessee and it cannot be that of the Official Assignee.

6.The appointment of a nodal agency does not in my opinion denude the power of the Assessing Officer to issue a PAN number to the Official Assignee as an Administrator of the estate of insolvent, whenever an application is made by the Official Assignee. Hence there will be a direction to the jurisdictional Assessing Officers to issue a PAN Number, whenever it is sought for by the Official Assignee, subject to the Rules and Regulations contained in the Income Tax Act without insisting on the photographs of the assessees.

7.Upon assignment of PAN Number, the Official Assignee shall file the Return along with the admitted tax or the disputed tax. Upon completion of the assessment by the concerned Assessing Officer, the question of waiver of interest or penalty will be considered separately."

In view of the above, the same order will apply to this application also.

WITNESS, THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE 22ND DAY OF JANUARY 2018.

sd/-

ASSISTANT REGISTRAR
Original Side - I

//CERTIFIED TO BE TRUE COPY//

DATED THIS THE DAY OF 2018

MANAGER

INSOLVENCY OFFICE

cns-22.02.2018

HIGH COURT, MADRAS

APPLN.No.133 OF 2017

IN

I.P.NO.45 OF 2004

THE HON'BLE MR.JUSTICE

R.SUBRAMANIAN

ORDER DATED:22.01.2018

FOR APPROVAL: 26/02/2018

APPROVED ON : 26/02/2018

COPY TO:-

1.THE OFFICIAL ASSIGNEE
HIGH COURT, MADRAS.

2.THE DEPUTY COMMISSIONER OF
INCOME TAX,
NO.611, ANNASALAI,
CHENNAI 6.