IN THE HIGH COURT OF JUDICATURE AT MADRAS

(IN INSOLVENCY)

MONDAY, THE 26TH DAY OF FEBRUARY 2018

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

APPLN.NOS.152 to 155 OF 2017
IN
I.P. No.69 of 1999

IP No.69 of 1999

In the matter of the Presidency Towns Insolvency Act, III of 1909 and In the matter of Dr.R.Ashokan Proprietor of Arunraj Company

... Debtor

Dr.R.Ashokan
S/o.A.Rajamani
Proprietor of Arun Raj Company
No.6, South Street,
West C.I.T. Nagar
Nandanam, Chennai-35. ... Petitioner/Debtor

Appln. No.152 to 155 of 2017

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

-Versus-

1.Dr.R.Ashokan
No.1, Ground Floor, 2nd Street,
2nd Cross Vaishnavi Nagar,
Chennai-600 109. ... 1st Respondent/Insolvent

2.The Assistant Commissioner of Income Tax,
Non Corporate Range 7,
No.121, Nungambakkam High Road,
Chennai 34. ... 2 Respondent

Application No.152 of 2017 praying that this Hon'ble Court be pleased to direct the Official Assignee to file the Returns of Income for the Assessment Years 2015-2016 and 2016-2017 in the case of R.Ashokan (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).

Application No.153 of 2017 praying that this Hon'ble Court be pleased to direct the Jurisdictinal Assessing Officer(The Assistant Commissioner of Income Tax/Respondent) to accept the Returns of Income for the Assessment Years 2015-2016 and 2016-2017 in the above Insolvent's Estate manually and complete the Assessment in accordance with law after affording due opportunities to the Official Assignee.

Application No.154 of 2017 praying that this Hon'ble Court be pleased to direct the Jurisdictional Assessing Officer(2nd respondent) to accept the Returns of Income to be filed without insisting for the Permanent Account Number and if necessary direct the Aassessing Officer to allot the same under Sec.139A of the Income Tax Act 1961 after Receipt of the Returns of Income filed for the Assessment Years 2015-2016 and 2016-2017.

Application No.155 of 2017 praying that this Hon'ble Court be pleased to direct the Assessing Officer not to insist on payment of interest payable under sections 234A, 234B and 243C of the Income Tax Act 1961 with respect to the Returns of Income filed manually. Since the issue of waiver is subject matter of appeal before the Honourable Supreme Court of India in SLP(C) No.6419-23 of 2017 filed by the Income Tax Department.

The above applications coming on this day before this court for hearing in the presence of Mr.J.Balachander, advocate for the Official Assignee, the applicant in all applications Mr.J.Balagopal, advocate for 1st respondent/insolvent and Mr.M.Swaminathan, Standing Counsel for the 2nd Respondent(Income Tax) in all applications and upon reading the Judges Summons and Report of the Official Assignee filed in all applications and

THE COURT MADE THE FOLLOWING ORDER :

The Official Assignee will follow the procedure prescribed in the order dated 15.11.2017 made in A.Nos.266 to 269 of 2017 in I.P.No.45 of 1999. 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 return 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."

2.The Official Assignee seeks a direction to file Returns of income for the Assessment Years 2015-2016 and 2016-2017, in the case of insolvent in this case and pay the tax including the disputed tax without interest.

3.In view of the fact that the question of payment of interest under Section 234 A, 234 B and 234 C of the Income Tax Act 1961, is pending before the Hon'ble Supreme Court, accepting the averments in the affidavit filed in support of the applications, the above applications are allowed and the Official Assignee is permitted to file the Returns for the income of the insolvent and pay the taxes including the disputed taxes without interest.

WITNESS, THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE 26th DAY OF FEBRUARY 2018.

SD/-

ASSISTANT REGISTRAR
Original Side – I

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

COURT OFFICER(OS)

cns- 20.03.2018

HIGH COURT, MADRAS

APPLN. Nos.152 to 155 OF 2017

IN

I.P.NO.69 of 1999

THE HON'BLE MR.JUSTICE

R.SUBRAMANIAN

ORDER DATED: 26.02.2018

FOR APPROVAL: 20/03/2018

APPROVED ON : 21/03/2018

COPY TO:-

THE OFFICIAL ASSIGNEE,
HIGH COURT, MADRAS.