IN THE HIGH COURT OF JUDICATURE AT MADRAS

(IN INSOLVENCY)

MONDAY, THE 16TH DAY OF JULY 2018

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

APPLICATION Nos.195 to 198 of 2018

IN

INSOLVENCY PETITION NO.127 OF 2003

In the matter of the Presidency Towns Insolvency Act, III of 1909 and In the matter of G.V.Kuppuswamy ... Petitioner/ Debtor

IP NO. 127 of 2003

G.V.Kuppuswamy
S/o.G.Venkataraman
residing at No.25, South Mada Street,
A4 Ground Floor, Vasanth Apartments,
Srinagar Colony, Saidapet,
Chennai - 600 015.

... Petitioner / Debtor

APPLN. NO. 195 OF 2018

Official Assignee,
High Court, Madras.

... Applicant

-VS-

1. G.V.Kuppusamy
No.19, South Mada Street,
A/4, Vasanth Apartment,s
Sri nagar Colony,
Saidapet, Chennai 15.

... 1st Respondent/Insolvent

2. The Assistant Commissioner of Income Tax,
Range - 13, Annexe Building,
121, Nungambakkam High Road,
Chennai 34. ... 2nd Respondent

Application No.195 of 2018 praying that this Hon'ble court be pleased to direct the Official Assignee to file the Returns of Income for the Assessment years 2012-2013 in the case of G.V.Kuppuswamy (insolvent) and pay the taxes including disputed taxes, without interest by way of cheque/draft drawn in favour of the Jurisdictional Assessing Officer (Respondent).

Application No.196 of 2018 praying that this Hon'ble court be pleased to direct the Jurisdictional Assessing Officer (The Assistant Commissioner of Income Tax/Respondent) to accept the Returns of Income for the Assessment years 2012-2013 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.197 of 2018 praying that this Hon'ble court be pleased to direct the Jurisdictional Assessing Officer (Respondent) to accept the Returns of Income to be filed without insisting for the Permanent Account Number and if necessary direct the Assessing officer to allot the same under Section 139A of the Income Tax Act 1961 after Receipt of the Returns of Income filed for the Assessment years 2012-2013.

Application No.198 of 2018 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, 234C 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 Hon' ble 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; and M/s.Swaminathan & V.Pushpa, advocates for the 2nd respondent in all applications; and upon reading the Judges Summons and reports of the Official Assignee filed in all applications;

THE COURT MADE THE FOLLOWING ORDER :

The present Applications have been filed for the following reliefs:

> **i) A.No.195 of 2018: T**o direct the Official Assignee to file the Returns of Income for the Assessment years 2012-2013 in the case of G.V.Kuppusamy (insolvent) and pay the taxes including disputed taxes, without interest by way of cheque/draft drawn in favour of the Jurisdictional Assessing Officer (Respondent).
>
> **ii) A.No.196 of 2018:** To direct the Jurisdictional Assessing Officer (the Assistant Commissioner of Income Tax/Respondent) to accept the Returns of Income for the Assessment years 2012-2013 in the above insolvents Estate manually and complete the Assessment in accordance with law after affording due opportunities to the Official Assignee.
>
> **iii) A.No.197 of 2018:** To direct the Jurisdictional Assessing Officer (Respondent) to accept the Returns of Income to be filed without insisting for the

permanent Account Number and if necessary direct the Assessing Officer to allot the same under Section 139 A of the Income Tax Act 1961 after Receipt of the Returns of Income filed for the Assessment years 2012-2013.

iv) A.No.198 of 2018: To direct the Assessing Officer not to insist on payment of interest payable under Sections 234A, 234B and 234C of the Income Tax Act 1961 with respect to the Returns of Income filed annually since the issue of Waiver is subject matters of appeal before the Hon'ble Supreme Court of India in SLP (c) No.6419-23 of 2017 filed by the Income Tax Department.

2. The learned counsel for the Applicant/Official Assignee submitted that the immovable properties belonged to the insolvent, now vest in the hands of the Official Assignee under Section 17 of the Presidency Towns Insolvency Act. The sale of immovable properties result in capital gains. In the above circumstances, the Official Assignee as a Representative Assessee of the insolvent, has to pay the advance tax payments and as well as the self assessment tax before filing the Return of income for the respective assessment years on behalf of the insolvent. For that reason, he requires a Permanent Assessment Number. Hence, the present application has been filed.

3. The learned Official Assignee also submitted that

in similar circumstances this Court, by order dated 15.11.2017 in A.Nos.266 to 269 of 2017 in IP No. 45 of 1999 & etc., directed the Income Tax Department to issue PAN Number and similar order could be passed in these applications also.

4.The learned counsel appearing for the Income Tax Department has fairly submitted that the order passed by this Court dated 15.11.2017 was also followed in A. No.133 of 2017 in I.P. No.45 of 2004 dated 22.01.2018, and necessary directions were issued in favour of the Official Assignee. In the similar circumstances, this Court may also pass similar order directing the Income Tax Department to issue PAN number whenever sought by the Official Assignee, subject rules and regulations.

5. I have consider the rival submissions.

6. In the similar circumstances, this Court has passed an order as follows:

> "3.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 2of Section 139(A) of the Income Tax Act, The Assessing Officers has got the power to allot a permanent Account Number to any other person (Whether any tax is payable or not0 in any manner and in accordance with the procedure as may be prescribed.

4.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 the official Assignee.

5. The appointment of nodal agency does not in any opinion denude the power of the Assessing Office 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 of by the Official Assignee, subject to the Rules and Regulations contained in the Income Tax without insisting the photographs of the assessees.

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

7. In view of the above orders passed by this Court, these Applications are allowed in terms of the orders dated 15.11.2017 and 22.01.2018.

WITNESS, THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE 16TH DAY OF JULY 2018.

sd/-
ASSISTANT REGISTRAR
Original Side - I

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

MANAGER

INSOLVENCY OFFICE

cns-03/08/2018

HIGH COURT, MADRAS

APPLN. NOS.195 TO 198/2018

IN

I.P.NO.127 OF 2003

ORDER DATED:16/07/2018

THE HON'BLE MR.JUSTICE

V.BHARATHIDASAN

FOR APPROVAL: 07/08/2018

APPROVED ON : 07/08/2018

COPY TO:-
THE OFFICIAL ASSIGNEE
HIGH COURT, MADRAS.