IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.5464 of 2018

Park Dugar Township Owners'Welfare Association (Regd)
[PAN No.AAAAP2553L],
Rep. By its Secretary,
Park Dugar,
Mount Poonamallee road,
Ramavaram
Chennai:600 089 .. Petitioner

-vs-

Income Tax Officer,
Non Corporate Ward 8(3),
Office of the Commissioner of Income Tax,
Room No. 503, V floor,
Annexe Building,
121, Mahatma Gandhi Salai,
Chennai: 600 034 ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the impugned penalty notice in AAAAP2553L/ 8(3)/221(1)/ 2017-18 dated 08.01.2018 prayed by the respondent herein, quash the same.

For petitioner : M/s. Aparna Nandakumar

For Respondent : Mrs. Hema Muralikrishnan,
Standing Counsel

O R D E R

Heard Ms. Aparna Nandakumar, learned counsel for the petitioner and Mrs. Hema Muralikrishnan, learned Standing Counsel for the respondent.

2. The petitioner is aggrieved by a notice issued by the respondent under Section 221(1) of the Income Tax Act, 1961, by which the respondent has directed the petitioner to show-cause as to why penalty should not be levied under the said section in respect of the demand under Section 143(1)(a) for the Assessment year 2012-13. Admittedly, as against the Assessment Order, the petitioner had filed a petition for rectification before the Assessing Officer vide application dated 13.02.2017. The said application was not disposed of for more than one year and therefore the petitioner filed W.P.No.5465 of 2018 for a direction to the Assessing Officer to rectify the error, which according to the petitioner, is apparent on the face of the record.

3. After the writ petition was filed on 09.03.2018, notice was ordered to the respondent on 12.03.2018. It appears that the respondent has taken up the matter and passed an order on 19.04.2010 rejecting the application for rectification as against which the petitioner has filed a revision under Section 264 of the Income Tax Act, 1961 before the Commissioner of Income Tax on 23.05.2016, which is still pending. In the interregnum, if the impugned notice under Section 221 (1) of the Act is to be enforced the petitioner's rights would be prejudiced. Apart from that, the revision petition filed by the petitioner before the Commissioner is likely to be rendered as infructuous. Therefore, the impugned penalty proceedings has to necessarily await the decision of the Commissioner of Income Tax on the petition filed under Section 264 of the Income Tax Act.

In the light of the above, the writ petition is disposed by directing the respondent to keep the impugned notice dated 08.01.2018 in abeyance and await the decision in the petition filed under Section 264 of the Act dated 23.05.2018 before the Commissioner of Income Tax challenging the order passed by the Assessing Officer dated 19.04.2018. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The Income Tax Officer,
Non Corporate Ward 8(3),
Office of the Commissioner of Income Tax,
Room No. 503, V floor,
Annexe Building,
121, Mahatma Gandhi Salai,
Chennai: 600 034

+1cc to M/s. Aparna Nandakumar, Advocate sr.no.52738
+1cc to Mrs. Hema Muralikrishnan, Advocate sr.no.52789

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nr 29/08/2018