IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2018

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.30326 of 2008
and
M.P.No.1 of 2008

M/s.Tamilnadu Cements Corporation Ltd.,
Rep. by its Senior Company Secretary,
Shri K.Meyyanathan,
LLA Building, II Floor,
735, Anna Salai,
Chennai-600 002. ...Petitioner

Vs

1.Assistant Commissioner of Income Tax,
Company Circle III (1),
Aayakar Bhavan, New Block, IV Floor,
121, Mahatma Gandhi road,
Chennai-600 034.

2.Board for Industrial and Financial Reconstruction,
1, Tolstoy Marg,
New Delhi-110 001. ...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, forbearing the first respondent from taking any steps for the recovery or the collection of the demand pursuant to the assessment order in GIR No. / PAN 31003-T/AABCT1819J dated 28.12.2007 relating to the Assessment year 1997-98 and referred to in the order of the Board for Industrial and Financial Reconstruction in Case No.604/2002 dated 04.06.2008.

For Petitioner :Mr.N.Muthukumar

For Respondents :Mr.Narayana Swamy
Standing Counsel for R1

ORDER

This writ petition has been filed to forbear the first respondent from taking any steps with regard to the recovery or collection of the demand made against the petitioner, pursuant to the assessment order in GIR No. / PAN 31003-T/AABCT1819J, dated 28.12.2007 for the year 1997-98.

2.When the matter was taken up for hearing, the learned counsel for the petitioner as well as the learned standing counsel for the first respondent, submitted that the issue involved herein was subsequently decided by the Income Tax Appellate Tribunal, C Bench, Chennai, in favour of the petitioner / assessee, by order dated 16.2.2017, the operative portion of which reads as follows :-

> 2.5. "..... At the outset, we find that the assessee had raised 8 grounds before the Id CITA, but the ID CITA had adjudicated only Ground 2 in his order and had not given his finding on the other grounds, which are very crucial to the determination of total income of the assessee. Accordingly, we deem it fit and appropriate, in the interest of justice and fair play, to set aside this appeal to the file of the Id CITA, to decide the other grounds, in accordance with law. Meanwhile, in case if any directions were given by BIFR with regard to determination of total income of the assessee, the assessee is also at liberty to justice and fair play, to set aside this appeal to the file of the ID CITA, to decide the other grounds, in accordance with law. Meanwhile, in case if any directions were given by BIFR with regard to determination of total income of the assessee, the assessee is also at liberty to file the copy of the order of the same before the Id CITA. As the issue relates to Asst. Year 1997-98, being very old, we deem it fit and appropriate to set a specific time frame in this regard for disposal of this appeal. Hence, the Id CITA is directed to decide this appeal within a period of one year from the date of receipt of this order and the assessee is directed to co-operate with the expeditious disposal of this appeal before the Id CITA. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

3.In view of the above, this Court remands back the matter to the first respondent for a fresh consideration, on merits and in accordance with law and also in the light of the order of the Tribunal, dated 16.02.2017 in I.T.A. No.1727/Mds/2014, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

vsi2/rst

To
1.Assistant Commissioner of Income Tax,
Company Circle III (1),
Aayakar Bhavan, New Block, IV Floor,
121, Mahatma Gandhi road,
Chennai-600 034.

2.Board for Industrial and Financial Reconstruction,
1, Tolstoy Marg,
New Delhi-110 001.

+1 CC to Mr.N.Muthukumar Advocate sr 86474.

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RGN(CO)
SP(14/02/2019)