In the High Court of Judicature at Madras

Dated : 20.6.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.14561 of 2018
& WMP.Nos.17193 & 17194 of 2018

M/s.Zylog Systems Ltd., rep.by
its Director Ashok Kumar Kohli ...Petitioner

Vs

1.The Deputy Commissioner of Income Tax, Corporate Circle 3(2), Chennai-34.

2.The Official Liquidator, Corporate Bhawan, II Floor, No.29, Rajaji Salai, Chennai-1.
(R2 was impleaded suo motu by order dated 18.6.2018 by TSSJ) ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the file of the first respondent in CHE 253C2/385/AACZ1086G dated 28.2.2018 and quash the same as illegal and contrary to the provisions of the Income Tax Act.

For Petitioner :Mr.Kumarpal R.Chopra
For Respondent-1:Mr.J.Narayanaswamy
For Respondent-2:Mr.A.P.Babu

ORDER

Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner is a company incorporated under the provisions of the Companies Act, 1956 and presently the petitioner is before the Company Court at the instance of a petitioning creditor in C.P.No.372 of 2013, in which, the provisional liquidator has been appointed by order dated 03.7.2014. In addition to that, the Company Court appointed the Honourable Mr.Justice S.Rajeswaran as the Administrator of the petitioner company by order dated 20.11.2015 and the tenure of such appointment has been further extended by order dated 30.6.2017.

3. The petitioner is aggrieved by the notice issued by first respondent dated 28.2.2018 stating that a sum of Rs.3,86,34,61,070/- is due and payable as income tax for the assessment years from 2008-09 to 2013-14. Further, the petitioner company has been requested to make the payment immediately, furnish proof of payment and avoid levy of interest, penalty and prosecution proceedings as provided under the Income Tax Act, 1961.

4. The petitioner is before this Court by contending that the first respondent ought not to have issued the impugned notice, as the company is in liquidation and that the said company petition is pending. The petitioner would further contend that the first respondent ought to have taken note of the fact that the petitioner is in financial doldrums and on the top of it, issued a demand notice and thereafter attaching the bank account of the petitioner will result in misery and that the petitioner will not be able to pay the statutory dues towards liquidation proceedings including day to day expenses and salaries to the skeleton staff, who have been retained for administrative purposes.

5. When the case came up before this Court on 18.6.2018, this Court, after taking note of the facts set out in the petition, suo motu impleaded the Official Liquidator as the second respondent. The learned counsel representing the learned Official Liquidator is present in court. This Court carefully considered the submissions of the learned counsel on either side.

6. The learned Standing Counsel appearing for the first respondent Department would submit that the petitioner need not have rushed to this Court challenging the impugned notice and all that the petitioner could have done is to forward the notice to the learned Official Liquidator, who has now been appointed as the provisional liquidator of the petitioner company by the order of the Company Court dated 03.7.2014.

7. The learned counsel for the petitioner submits that the petitioner would have no reservation in forwarding the impugned notice to the learned Official Liquidator, but they are apprehensive about the consequences, which may turn around pursuant to the impugned notice, as there is a threat of not only demanding interest and penalty, but also initiation of prosecution as well. He would further state that if the bank accounts, which are alive, are attached, the petitioner will not be able to even carry out the day to day administrative affairs, which are very essential, since the petitioner company is in liquidation.

8. The learned counsel appearing on behalf of the learned Official Liquidator submits that if the impugned notice is forwarded to the learned Official Liquidator, appropriate action will be taken on the same and a suitable reply will be sent to the Income Tax Department.

9. In the light of the above, the writ petition is disposed of with a direction to the petitioner forward the impugned notice in original to the second respondent within a period of three days from the date of receipt of a copy of this order. On receipt of the impugned notice, the second respondent shall examine the facts and if necessary, interact with the first respondent and give a suitable reply to the first respondent. In the event the petitioner is aggrieved by any further consequential action at the hands of the first respondent, which they apprehend, it is well open to the petitioner to move an appropriate application before the Company Court in the pending company petition. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

To
1.The Deputy Commissioner of Income Tax,
Corporate Circle 3(2),
Chennai-34.

2.The Official Liquidator,
Corporate Bhawan, II Floor,
No.29, Rajaji Salai,
Chennai-1.

+ 1 cc to Mr.T. Pramod Kumar, Advocate Sr.39487
+ 1 cc to Mr. J. Naraynaswamy, Advocate SR.38810

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(CS-IX)
EU(09/07/2018)