IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2019

CORAM

THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

Writ Petition No.4582 of 2019

& W.M.P.Nos.5171, 5174 to 5176 of 2019

M/s. Doshi Estates,
Rep. by its Partner, Mr.Mehul H.Doshi
3H Century Plaza 3rd Floor, No. 560 Anna Salai
Teynampet Chennai - 600018 ... Petitioner

vs.

1 The Assistant Commissioner of Income Tax
Non-Corporate Circle - 3,
Room No. 623A, 6th Floor, Wanarpathy Block,
121 Mahatma Gandhi Road, Nungambakkam,
Chennai - 600034

2 The Commissioner of Income Tax (Appeals) - 4
121 Mahatma Gandhi Road,
Nungambakkam, Chennai - 600034

3 M/s. South Indian Bank, Triplicane Branch,
Rep. by its Branch Manager, 50 Triplicane High Road,
Triplicane, Chennai - 600005

4 M/s. State Bank of India, Kilpauk Branch,
Rep. by its Branch Manager
No. 22A Taylors Road Kilpauk
Chennai - 600010 .. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus Calling for the records on the file of the 1st respondent in PAN. AAGFD4592A in issuing the impugned notice u/s. 226(3) of the Income Tax Act 1961 dated 08.02.2019 and quash as illegal, arbitrary and devoid of merit and consequentially direct the 1st respondent to grant say of all further recovery proceedings pertaining to the AY 2012-13 pending disposal of the appeal preferred by the petitioner before the 2nd respondent.

For Petitioner: Mr. R.Sivaraman

For R-1 to R-3: Mrs. Hema Muralikrishnan,

Sr. Standing Counsel

For R-4: Mr. C.Mohan, for, M/s. King and Patridge.

O R D E R

The petitioner is a Partnership Firm, assessed to Income Tax on the file of the first respondent / Assistant Commissioner of Income Tax, Non-Corporate Circle - 3. In respect of assessment year 2012-13, an order of assessment in terms of the provisions of the Income Tax Act, 1961 (in short 'Act') was initially passed by the officer accepting the return of income filed by the petitioner. The assessment was revised by the Principal Commissioner of Income Tax, under Section 263 of the Act, on 21.12.2016.

2. Pursuant to the order under Section 263 of the Act, the Assessing Authority took up the assessment for completion and issued a show cause notice dated 08.12.2017. After hearing the petitioner, an order of assessment under Section 143 (3) read with Section 263 of the Act was passed on 30.12.2017, making various additions and adjustments, and primarily denying the benefit of deduction under Section 80IB (10) of the Act as claimed by the petitioner. The aforesaid assessment has been carried in appeal before the first appellate authority by the petitioner. The assessment has given rise to a demand of a sum of Rs.2,14,09,400/-.

3. The petitioner has filed an application seeking stay of recovery of the demand before the first respondent, which is yet pending disposal. Even during the pendency of the aforesaid stay application, garnishee notices under Section 226 (3) of the Act appear to have been issued to the third and fourth respondents, the South Indian Bank, Triplicane Branch and State Bank of India, Kilpauk Branch. It is, as against the aforesaid coercive recovery proceedings that the petitioner is before this Court.

4. Mrs.Hema Muralikrishnan, learned Senior Standing Counsel, who appears for respondents 1 to 3, concurs on the

position that the Appeal and stay petition are pending disposal before the Commissioner of Income tax (Appeals) and the assessing officer. She submits that in the event that the Court is inclined to consider the prayer of the petitioner for interim stay of recovery, the interests of the Revenue be fully protected.

5. In the light of the fact that both the appeal as well as the stay petition filed by the petitioner are pending before the appellate authority and the assessing officer respectively, I am of the view that the interests of both parties will be protected by directing the petitioner to remit a sum of Rs.25,00,000/- (Rupees twenty five lakhs only) either by appropriation of the amounts lying to its credit in the South Indian Bank, Triplicane Branch / the third respondent herein or by way of fresh remittance, to the satisfaction of the assessing authority. Upon receipt of proof of remittance of the sum of Rs.25,00,000/- as directed aforesaid, the order of attachment of the petitioners' bank account in the South Indian Bank shall stand lifted.

6. The stay application filed by the petitioner, dated 29.01.2019, is pending before the first respondent and the officer is directed to dispose the same within a period of two weeks from today. No further proceedings for recovery shall be taken for a period of three weeks from today.

7. The writ petition is disposed finally, in the aforesaid terms. Consequently, the connected WMPs are closed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

Srk

To

1 The Assistant Commissioner of Income Tax
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+1cc to Mr. King & Partridge, Advocate, S.R.No. 17539

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KJ(CO)

GN(19/03/2019)