IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2019

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.749 of 2012

Ms.Nirmala Chandrasekaran ... Petitioner

Vs.

1. Assistant Commissioner of Income Tax,
Company Circle - III (1),
121, Nungambakkam High Road,
Chennai - 600034.

2. Income Tax Ombudsman
(Tamil Nadu & Puducherry)
Ministry of Finance Department of Revenue,
6th Floor, Kannammai Building,
611, Anna Salai, Chennai - 600006. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records in F.No.1205/I.T. Omb/Award No.3/11-12/1469 dated 28.09.2011 on the file of the second respondent and quash the same and further direct the first respondent to pay over the amounts of refund due to the petitioner herein of a sum of Rs.26,00,000/- and a sum of Rs.36,12,255/- along with interest under Section 244A of the Income Tax Act.

For Petitioner : Mr.M.P.Senthil Kumar

For Respondents : Mr.J.Narayanasamy
Standing Counsel

O R D E R

This writ petition is filed challenging the order of the second respondent dated 28.09.2011, wherein and whereby, the second respondent/Ombudsman disposed the complaint filed by the assessee/petitioner dated 24.06.2010, in the light of the observation made at paragraph No.6 of the order, which reads as below:

> "6. I have considered the averments made by the complainant as also the reports of the Assessing Officer dated 17.06.2011 and 27.07.2011. When Section 179(1) was invoked in

the case of the complainant, who was a director in the company, M/s.Tarachanthini Services Pvt. Ltd., on 23.03.2009, there were outstanding arrears of Rs.23,02,02,277/- in the case of the company. I agree with the Assessing Officer that once the refund due to the assessee-complainant was adjusted against the arrears of the company, in which she was a director, the amount adjusted was no longer available in her hands. The refund, if any, arising thereafter in the case of the company could be given only to the company. Since arrears were outstanding in the case of the company for the Asst.year 2001-02, the refund of Rs.41,60,906 determined for AY 2000-01, was rightly adjusted against the same (the outstanding arrears)."

2. Mr.J.Narayanasamy, learned standing counsel for the respondents submitted that in view of the guideline 13(iv) of the Income Tax Ombudsman 2010, the order impugned in this writ petition had already lapsed, since the petitioner has not given the letter of acceptance of the award within fifteen days from the date of receipt of a copy of the award. Therefore, he submitted that since the award passed by the second respondent, which is put to challenge in this writ petition, has already lapsed, nothing survives in this writ petition to be adjudicated upon further.

3. Mr.M.P.Senthil Kumar, learned counsel for the petitioner is not disputing the above stated facts and circumstances and thus, submitted that the writ petition may be disposed of as infructuous.

4. In view of the fact that the impugned award has already lapsed as per the above guideline 13(iv) and by considering the above stated facts and circumstances and the submissions made by both parties, this writ petition is disposed of as infructuous. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sni

To

1. Assistant Commissioner of Income Tax,
Company Circle - III (1),
121, Nungambakkam High Road,
Chennai - 600034.

2. Income Tax Ombudsman
(Tamil Nadu & Puducherry)
Ministry of Finance Department of Revenue,
6th Floor, Kannammai Building,
611, Anna Salai, Chennai - 600006.

+1cc to Mr.N.Muthukumar, Advocate SR.86637

W.P.No.749 of 2012

PVS(CO)
CB(25/11/2019)