IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2020

CORAM:

THE HON'BLE MR. JUSTICE R.MAHADEVAN

W.P.No. 21661 of 2015
and M.P.No. 1 of 2015 and
WMP.No.30963 of 2019

M/s. India Cements Limited,
No.93, Coromandal Towers,
Santhome High Road,
Karpagam Avenue, R.A. Puram,
Chennai - 600 028.
Represented by its Sr.Vice President,
R. Harihara Subramanian ...Petitioner

Vs

1. The Principal Commissioner of Income Tax,
   Chennai - 2, Chennai - 600 034.

2. The Assistant Commissioner of Income Tax,
   Company Circle - 2(1), Chennai - 600 034. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in C.No.263/05/PCIT-2/2014-2015 for the assessment year 2007-2008 and quash the impugned order dated 26.03.2015 passed under Section 263 of the Income Tax Act, 1961 and direct the 1st respondent to drop the revision proceedings against the petitioner.

For Petitioner :Mr.P.S.Raman ,Senior Counsel
for Mr.Subbaraya Aiyar

For Respondents:Mrs. Hema Muralikrishnan
Standing Counsel

O R D E R

This writ petition has been filed by the petitioner to quash the order dated 26.03.2015 passed under Section 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by the first respondent vide C.No.263/05/PCIT-2/2014-15 for the Assessment Year 2007-2008 and to direct the first respondent to drop the revision proceedings against the petitioner.

2.In the order impugned herein, the first respondent has pointed out the following omissions in the assessment order dated 30.03.2013 passed by the Assessing Officer under Section 143(3) r/w Section 263:

(i)After assessing the income for the year, brought forward losses have been allowed to be set off against the income so assessed under both the normal computation and book profits u/s 115 JB. The set off against book profits is erroneous and excessive.

(ii)During the year, a sum of Rs.59.02 crores being expenditure towards FCCB/premium on debentures was incurred and this was allowed in the assessment order. Out of this, Rs.33.53 crores represents premium on debentures, which ought to have been restricted to the actual amount of debentures redeemed during the year.

(iii)From the records, it is observed that subsequent to the completion of assessment order u/s 143(3) r/w section 263, information was received that the assessee company made investments in M/s.Janani Infrastructure Pvt. Ltd during the previous year of 1,90,839 shares amounting to Rs.4,99,99,818/-. After issuing show cause notice and calling upon the objections from the petitioner and upon examining the materials available on record, the first respondent has observed that the assessment order dated 30.03.2013 passed by the Assessing Officer was erroneous and prejudicial to the interests of Revenue and accordingly, directed the Assessing Officer to modify the assessment and pass necessary orders in accordance with law, after affording due opportunity to the assessee.

3.Upon notice, the respondents filed a detailed counter affidavit, wherein, it is inter alia stated that the order impugned herein has been passed after duly and properly considering all the submissions made by the petitioner and the petitioner has an effective and efficacious statutory appellate remedy against the impugned order and therefore, the writ petition is liable to be dismissed.

4.Though the petitioner assailed the order impugned herein raising very many grounds, the learned counsel for the petitioner, during the course of arguments, submitted that it would suffice, if the petitioner is granted liberty to file appeal as against the order impugned herein, before the appellate authority.

5.The learned Standing Counsel appearing for the respondents has no serious objection in granting such relief to the petitioner.

6.Having regard to the submission now made by the learned counsel for the petitioner, which has not been seriously opposed on the side of the respondents, the petitioner is granted liberty to file appeal before the Appellate Authority within a period of three weeks from the date of receipt of a copy of this order. On such filing, the Appellate Authority shall entertain the same, without raising any objection relating to limitation and proceed further and pass appropriate orders, on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioner, within a period of six weeks thereafter.

7.Accordingly, this writ petition stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Principal Commissioner of Income Tax,
Chennai - 2, Chennai - 600 034.

2. The Assistant Commissioner of Income Tax,
Company Circle - 2(1), Chennai - 600 034.

+1cc to Ms.Hema Muralikrishnan, Advocate, Sr.No.23286

W.P.No. 21661 of 2015

MP(CO)
GS(06/08/2020)