IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 09.12.2020
CORAM
THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU
W.P. No. 4542 of 2018
and
W.M.P. No. 5595 of 2018

M/s. Ponni Sugars (Erode) Ltd.
Rep. by its DGM, Accounts
Sri. G.Lakshmi Narayanan
S/o. N.Gopalakrishnan
ESVIN House
13, Old Mahabalipuram Road
Seevaram Village, Perungudi
Chennai - 600 096. ... Petitioner

-vs-

1. Deputy Commissioner of Income-Tax
Corporate Circle - 5(2)
121, Mahatma Gandhi Road
Nungambakkam
Chennai - 600 034.

2. The Commissioner of Income Tax (Appeals)-3
121, Mahatma Gandhi Road
Chennai - 600 034. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records in ITA No.03/2006-07/CIT(A)-3 dated 29.12.2017 for the Assessment Year 2003-04 on the file of the Second Respondent and quash the same.

For Petitioner : Mr. A.L.Somayaji, Senior Counsel
for Mr. M.P.Senthil Kumar

For Respondents: Mr. Prabhu Mukunth Arunkumar
Junior Standing Counsel

O R D E R
(through video conference)

Heard Mr. A.L.Somayaji, Learned Senior Counsel appearing for the Petitioner and Mr. Prabhu Mukunth Arunkumar, Learned Junior Standing Counsel appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. It is borne out of the materials placed on record that by an order dated 10.09.2001 in Company Petition Nos. 118 and 119 of 2000, the scheme of arrangement had been sanctioned by this Court in respect of the Petitioner, viz., M/s. Ponni Sugars (Erode) Limited, with a specific provision entitling it to claim depreciation in its tax returns on the basis of fair market value of fixed assets as on 01.04.1999 arrived on the basis of independent valuation to be undertaken. It is the case of the Petitioner that in furtherance thereto, the Petitioner had filed return of income tax for the assessment year 2003-2004, but the direction of this Court to provide for depreciation had not been accepted by the First Respondent in the order dated 22.03.2006 passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'IT Act' for short). The appeal preferred by the Petitioner under Section 250 (6) of the IT Act against that order was dismissed by Order in ITA No. 03/2006-07/CIT(A)-3 dated 29.12.2017 passed by the Second Respondent, which is challenged in this Writ Petition.

3. Learned Senior Counsel appearing for the Petitioner contends that despite this Court in the order dated 10.09.2001 in Company Petition Nos. 118 and 119 of 2000 having provided for depreciation on the assets of the Petitioner with the effect from 01.04.1999, the Respondents have refused to extend the said benefits in the impugned order, which relates to the assessment year 2003-2004. It is further brought to notice that the Assessing Authority while passing assessment orders in respect of the same Petitioner for the assessment years 2001-2002, 2002-2003, 2004-2005, 2005-2006 and 2006-2007 had declined to grant the same benefit, which was assailed by the Petitioner in W.P. Nos. 12510 and 12511 of 2004, 12255 of 2006, 3830 of 2007, 1054 of 2008 and 2629 of 2009. This Court by a common order dated 16.10.2020 in that batch of cases relying on the decision of the Hon'ble Supreme Court of India in Dalmia Power Limited -vs- Assistant Commissioner of Income Tax Circle 1 (Order dated 18.12.2019 in Civil Appeal Nos. 9496-9499 of 2019) held that an order sanctioning a scheme of arrangement pursuant to Sections 391 to 394 of the Companies Act, 2013, will have statutory force, binding on all concerned and the sanction of the Court would operate as judgment in rem, meaning thereby that the authorities under the IT Act cannot ignore the benefits conferred under that scheme for claiming depreciation of assets in tax returns, and had quashed those orders and remitted the matter to the Assessing Authority for fresh consideration. On that premise, it is claimed that the Petitioner is entitled to

the same benefit for the assessment year 2003-2004, which was wrongfully denied by the Second Respondent in the impugned order.

4. Having regard to the aforesaid submissions made by the Learned Senior Counsel appearing for the Petitioner, which deserves acceptance, there is no justification to deny the Petitioner of the same benefit for the assessment year 2003-2004, which has been granted for the assessment years 2001-2002, 2002-2003, 2004-2005, 2005-2006 and 2006-2007 in the order dated 16.10.2020 in W.P. Nos. 12510 of 2004 etc., batch passed by this Court.

5. In that view of the matter, the impugned order in ITA No.03/2006-07/ CIT(A)-3 dated 29.12.2017 passed by the Second Respondent and Order in PAN/GIR No. AACCP2779A/52564-P dated 22.03.2006 passed by the First Respondent are set aside and the matter is remitted to the First Respondent for fresh consideration. It shall be incumbent upon the First Respondent to take into consideration the conclusions and observations made by this Court in the order dated 16.10.2020 in W.P. No. 12510 of 2004 etc., batch, conduct enquiry affording full opportunity of personal hearing to the Petitioner following the prescribed procedure in consonance with the principles of natural justice, deal with each of the contentions raised, and pass reasoned orders on merits and in accordance with law and communicate the decision taken to the Petitioner under written acknowledgment.

The Writ Petition is ordered on the aforesaid terms. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Asst.Registrar (CCC)

/true copy/
Sub Asst. Registrar

maya

To

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   Corporate Circle - 5(2)
   121, Mahatma Gandhi Road
   Nungambakkam
   Chennai - 600 034.

2. The Commissioner of Income Tax (Appeals)-3
   121, Mahatma Gandhi Road
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+1 cc to M/s.Hema Muralikrishnan Advocate sr40040
+1 cc to M/s.G.Baskar Advocate sr39912

W.P. No. 4542 of 2018

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