IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.01.2020
CORAM
THE HONOURABLE Dr. JUSTICE ANITA SUMANTH
W.P.No.25595 of 2018 and
WMP.Nos.29746 & 29749 of 2018

M/s.The G.R.D. Trust,
Kalaikadhir Buildings,
963 - Avinashi Road,
Coimbatore - 641 037.
Represented by its Managing Trustee
Dr.D.Padmanaban .. Petitioner

Vs.

1.The Assistant Commissioner of Income Tax (Exemptions),
67A, Race Course Road,
Coimbatore - 641 018.

2.Deputy Commissioner of Income Tax,
Centralized Processing Center,
Bangalore - 560 500. .. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records of the 2nd Respondent in proceedings dated 15.09.2018 in Communication No.CPC/1718/G8/1814054969 and quash the same.

For Petitioner : Mr.J.Balachander for Mr.S.Saravanakumar

For Respondents : Mrs.Hema Muralikrishnan Senior Standing Counsel

ORDER

The petitioner challenges an intimation dated 15.09.2018 in terms of Section 245 of the Income Tax Act, 1961, adjusting outstanding demands for assessment year (AY) 2012-2013 of an amount of Rs.16,50,100/- and assessment year (AY) 2015-2016 of an amount of Rs.1,65,97,390/-.

2.In counter, the respondents fairly states that the demand of Rs.16,50,100/- does not survive any more. As far as the demand of a sum of Rs.1,65,97,390/- is concerned, it is seen that the intimation giving rise to such demand was the subject matter of an appeal before the Commissioner of Income Tax (Appeals).

3.The Commissioner considers the appeal in ITA No.16/18-19 and by order dated 26.07.2018, at para-6.1, states as follows:

> '6.1. While processing the return by the CPC the amount set apart for specified purpose was treated as income of the appellant. No reason was given for this adjustment made u/s.143(1) of the IT Act. This adjustment is beyond the scope of section 143(1) of the IT Act. The AO is directed to allow the claim if the appellant has filed Form 10B as provided in Rule 17B of the IT Act and it contains the details of amount set apart as claimed by the Appellant.'

4.This finding of the Commissioner (Appeals) to the effect that the adjustment made is beyond the scope of Section 143(1) has become final and the intimation was thus quashed. However, the Appellate Commissioner proceeds thereafter to issue a direction to the Assessing Officer to allow the claim upon satisfaction of certain conditions by the petitioner.

5.The learned counsel for the petitioner states that he is challenging belatedly, the order of the Appellate Commissioner before the Income Tax Appellate Tribunal (Tribunal), specifically in regard to the legality or otherwise of the direction issued by the Commissioner to the Assessing Officer.

6.Meanwhile the Assessing Authority has given effect to the order of the Appellate Commissioner on 20.08.2018 reiterating the order passed under Section 143(1) dated 24.12.2016 and stating that the said order requires no modification. It is consequent upon this order giving effect that the impugned intimation has been issued.

7.Since the direction given by the Commissioner in order dated 26.07.2018 is said to be in the process of being challenged before the Tribunal, I refrain from making any observations in regard to the same and leave it to the Tribunal to go into the appeal, if and when filed and decide the same in accordance with law.

8.However, the order of the Commissioner (Appeals) stating that the 143(1) intimation lacks jurisdiction has become final as admittedly no appeal has been filed against this order by the Department before the Tribunal. Thus the impugned Intimation in so far as it relates to the demand raised in Intimation issued under Section 143(1) is clearly bad in law and is quashed.

9.This writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VIII)

// True Copy//

Sub Assistant Registrar

vs

To

1. The Assistant Commissioner of Income Tax (Exemptions),
   67A, Race Course Road,
   Coimbatore - 641 018.

2. Deputy Commissioner of Income Tax,
   Centralized Processing Center,
   Bangalore - 560 500.

+1cc to Mr.I.Abrar Md.Abdullah, Advocate, SR.No.3952.
+1cc to Mrs.Hema Muralikrishnan, Advocate, SR.No.3871.

W.P.No.25595 of 2018
and
WMP.Nos.29746 & 29749 of 2018

PM(CO)
CSR: 13.03.2020