IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.05.2021

C O R A M

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.NO.11970 OF 2021
AND
WMP.NOS.12739 AND 12740 OF 2020

M/s.Omkara Assets Reconstruction Private Limited
Represented by its Director,
Mrs. Sudha Srikanth,
No. 57/29, Appachi Nagar Main Road,
Kongu Nagar Extension,
Tiruppur 641607. .. Petitioner

.Vs.

1. The Assistant Commissioner of Income tax,
   Income tax Officer,
   National e- Assessment Centre,
   Delhi.

2. Income Tax Officer, Ward 1(2)
   No. 121, Adams Building,
   Sixty Feet Road, Tiruppur 641602. .. Respondents

PRAYER :

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the first respondent relating to the impugned assessment order vide ITBA/ AST/S/143(3) / 2021-22/1032681333(1) dated 26.4.2021 passed u/s 143(3) read with Section 144B of the Income Tax Act and the consequent Notice of demand vide ITBA/AST/S/156/2021-22/1032681369(1) dated 26.4.2021 under section 156 of the Income Tax Act 1961, quash the same as illegal arbitrary and devoid of merit.

For Petitioner : Mr.P.H.Arvindh Pandian,
Senior Counsel
for Mr.Harishankar Mani

For Respondents : Mr.A.N.R.Jayaprathap
Standing Counsel (IT)

O R D E R
(Through Video Conferencing)

The Writ Petitioner challenges an Assessment Order dt.26.04.2021 passed under Section 143 (3) r/w Section 144 B of the Income Tax Act, 1961 and the consequential notice of demand dt.26.04.2021 under Section 156 of the said Act.

2.Learned Senior Counsel for the petitioner Mr.P.H.Arvindh Pandian, contends that the impugned order was issued without providing a reasonable opportunity to the petitioner under the faceless Assessment Scheme. He further submits that the aforesaid faceless Assessment Scheme envisages the issuance of a draft Assessment Order, which should be finalized only upon considering the objections of the petitioner. In the case at hand, the assessment was concluded without providing a reasonable opportunity to the petitioner. In specific, he points out that the Assessment Order included unsecured loans and share capital as income in the hands of the assessee while arriving at the total income of Rs.102,77,12,910/-. He also points out that an appeal was filed before the Commissioner of Income Tax (Appeals) on 10^{th} May 2021 and that an application for stay of the impugned demand was also filed. However, such application has not been taken up and decided till date.

3.Although the Assessment Order and demand notice are impugned herein, learned Senior Counsel submits that in light of the pending statutory appeal, the petitioner would be satisfied if such pending appeal is disposed of expeditiously and interim protection is granted in the meantime.

4.Mr. A.N.R.Jayaprathap, learned Standing Counsel (IT) accepts notice on behalf of both the respondents. He submits that there are constraints with regard to the expeditious disposal of the appeal at this juncture, but that the stay application could be directed to be disposed of expeditiously.

5.In view of the fact that the Assessment Order is appealable and such appeal has been filed by the petitioner, I am not inclined to consider the Writ Petition on merits. Nonetheless, in view of the fact that the main issues for consideration in such appeal are limited largely to the inclusion of unsecured loans and share capital as part of the total income of the assessee, I am inclined to direct the expeditious disposal of the Appeal pending before the Commissioner of Income Tax (Appeals). Such appeal shall be decided after providing a reasonable opportunity to the petitioner, including a personal hearing if so requested. Accordingly, Writ Petition No.11970 of 2021 is disposed of by directing the Commissioner of Income Tax [Appeals] to dispose of the appeal filed by the petitioner against the Assessment Order dt.26.04.2021 as expeditiously as possible, preferably within a period of two months from date. Until such time, the respondents are restrained from recovering amounts pursuant to the Assessment Order under challenge in the present Writ Petition. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kp/dsa

To

1. The Assistant Commissioner of Income tax,
   Income tax Officer,
   National e- Assessment Centre,
   Delhi.

2. Income Tax Officer, Ward 1(2)
   No. 121, Adams Building,
   Sixty Feet Road, Tiruppur 641602.

W.P.No.11970 of 2021

VBM(CO)
CS/10/06/2021