IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.Nos.7873, 7876, 7880 & 7884 of 2022
and
W.M.P.Nos.7872, 7874, 7877, 7879, 7882, 7884, 7886 & 7888 of 2022

M/s.Indian Overseas Bank
763, Anna Salai
Chennai 600 002
Rep.by its Managing Director
and CEO Mr.Partha Pratim Sengupta
...Petitioner in W.P.Nos.7873 & 7876/2022

Rep.by its Executive Director,
Mr.Ajay Kumar Srivastava
...Petitioner in W.P.Nos.7880 & 7884/2022

-Vs-

The Deputy Commissioner of Income Tax
Non Corp.Circle 8(1), Room No.507
Annexe Building, 121, M.G.Road
Chennai 600 034.
...Respondents in all W.Ps.

Prayer in W.P.No.7873 of 2022 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records on the file of the respondent herein in the Impugned Notice u/s.148 of the Act dated 30.03.2021 in DIN and Notice No. ITBA / AST / S / 148 / 2020-21 / 1031951987(1) and the consequential order dated 28.01.2022 in DIN and Letter No. ITBA / COM / F / 17 / 2021-22 / 1039166482(1) rejecting the objections raised by the petitioner for the Assessment Year 2014-15 and quash the same.

Prayer in W.P.No.7876 of 2022 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records on the file of the respondent herein in the Impugned Notice u/s.148 of the Act dated 29.03.2021 in DIN and Notice No. ITBA / AST / S / 148 / 2020-21 / 1031882304(1) and the consequential order dated 28.01.2022 in DIN and Letter No. ITBA / COM / F / 17 / 2021-22 / 1039166845(1) rejecting the objections raised by the petitioner for the Assessment Year 2015-16 and quash the same.

Prayer in W.P.No.7880 of 2022 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records on the file of the respondent herein in the Impugned Notice u/s.148 of the Act dated 29.03.2021 in DIN and Notice No. ITBA / AST / S / 148 / 2020-21 / 1031882396(1) and the consequential order dated 28.01.2022 in DIN and Letter No. ITBA / COM / F / 17 / 2021-22 / 1039167351(1) rejecting the objections raised by the petitioner for the Assessment Year 2016-17 and quash the same.

Prayer in W.P.No.7884 of 2022 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records on the file of the respondent herein in the Impugned Notice u/s.148 of the Act dated 29.03.2021 in DIN and Notice No. ITBA / AST / S / 148 / 2020-21 / 1031882422(1) and the consequential order dated 28.01.2022 in DIN and Letter No. ITBA / COM / F / 17 / 2021-22 / 1039167701(1) rejecting the objections raised by the petitioner for the Assessment Year 2017-18 and quash the same.

In All W.P's

For Petitioner : Mr.V.Vikram for Mr.R.Venkatanarayanan
M/s.Subbaraya Aiyar Padmanabhan

For Respondents: Mr.D.Prabhu Mukunth Arunkumar
Junior Standing Counsel

C O M M O N O R D E R

Since the issue raised in all these writ petitions is one and the same, with the consent of the learned counsel for the petitioner as well as the learned Government Advocate appearing for the respondent, these writ petitions were taken up together, heard and disposed of by this common order.

2. The petitioner is an assessee under the respondents. In respect of Assessment Years 2014-15, 2015-16, 2016-17 and 2017-18, in order to reopen the assessment under Section 147 of the Income Tax Act, 1961 (In short 'the Act'), they issued a notice under Section 148 of the Act. Thereafter, after filing return the assessee sought for the reasons, which were supplied by the Revenue and against those reasons, objections have been raised by the petitioner. Thereafter, those objections having been considered, was rejected through the impugned orders, which are impugned herein in these writ petitions along with the notice under Section 148 of the Act.

3. When these writ petitions are taken up for hearing, at the admission stage itself it is brought to the notice by the petitioner's counsel as well as the learned Standing Counsel for

the Revenue that in these matters, assessment orders have been passed. The learned counsel for the petitioner would canvass the point that, even if the assessee is driven to go before the appellate authority against the assessment orders, the very reopening under Section 147, according to the learned counsel for the petitioner, is impermissible as the assessing authority does not have the jurisdiction, therefore that point cannot be canvassed before the appellate authority. Moreover, assuming that those points also can be canvassed before the appellate authority while filing the appeal against the present assessment orders, during the pendency of the appeals, if petition for stay is filed and if the petitioner seeks for stay, unmindful of the high pitch claim in each of the assessment years, the appellate authority may mechanically impose 20% of the demand or tax due and that would greatly prejudice the interest of the petitioner assessee. Therefore, on that ground still the petitioner wants to assail the impugned orders ie., the rejection orders as well as the Section 148 orders in these writ petitions.

4.However, Mr.Prabhu Mukunth Arunkumar, learned Standing Counsel appearing for the respondents would contend that, once the assessment order has been passed and it is challenged by filing appeal, whether if stay petition is filed or not, it is for the appellate authority to take up the matter on merits and in accordance with law. Therefore, that cannot be a reason for challenging the Section 148 notice and the rejection orders at this juncture, without challenging the assessment orders before the appellate authority.

5. I have considered the submissions made by the learned counsel for either side and have perused the materials available on record.

6. Insofar as the apprehension raised by the learned counsel for the petitioner that, in case appeal is filed along with stay petition, that issue can be taken care of by the appellate authority whether if any grounds are urged by the petitioner assessee that there are high pitch claim in each of the assessment years which is covered under the assessment orders, and in respect of which, if any stay is asked for by filing a stay petition, the same can be objectively considered and decided on the merits of the case, which is going to be projected in the main appeal also and accordingly instead of passing a regular order of imposing the condition of payment of 20% of the demand, a lesser amount also can be considered to be imposed by the appellate authority depending upon the merits of the case.

7. Therefore, it is ultimately for the appellate authority to decide the stay petition while deciding the stay petition, however, the above observation made by this Court may be borne in mind by the appellate authority.

8. With the above observations, these writ petitions are dismissed relegating the petitioner to go before the appellate authority challenging the assessment order in respect of each assessment year along with stay petition, if any. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

KST

To

The Deputy Commissioner of Income Tax,
Non Corp.Circle 8(1), Room No.507
Annexe Building, 121, M.G.Road,
Chennai 600 034.

+1cc to M/s.Hema Muralikrishnan, Advocate SR. No. 22498
+1cc to M/s.Subbaraya Aiyar Padmanabhan, Advocate SR. No. 22619

W.P.Nos.7873,7876,
7880 & 7884 of 2022

SM (CO)
PR (19/05/2022)