IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.NOS.9200 & 9206 OF 2022 AND
W.M.P.NOS.8955, 8956, 8963 & 8965 OF 2022

Aadhitya Property Developers
Represented by its
Managing Partner Mr.K.Balakrishnan
75, Collector Sivakumar Street, K.K.Pudur,
Coimbatore – 641 038, Tamil Nadu,
India.

... Petitioner in both WPs

Vs

1. Additional/Joint/Deputy/Assistant Commissioner of Income Tax, Income Tax Officer, National e-Assessment Centre, Delhi.

2. The Income Tax Officer, Non Corp Ward 3(2), Coimbatore.

... Respondents in both WPs

Prayer in WP.No.9200 of 2022 :

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified mandamus to call for the records on the file of the first respondent and quash the impugned order in PAN ABBFA6073D dated 24.02.2022 in DIN ITBA/PNL/F/270A/ 2021-22/1040082045(1) passed by the first respondent under Section 270A of the Income Tax Act, 1961 for the assessment year 2017-18 and direct the first respondent to keep the penalty proceeding initiated under Section 270A of the Act in abeyance until disposal of the quantum appeal filed by the petitioner under Section 246A of the Act on 06.12.2021 in acknowledgment number 987662850061221 against the assessment order dated 27.09.2021 under Section 143(3) read with Section 147 read with Section 144B of the Act.

Prayer in WP.No.9206 of 2022 :

Petition filed under Article 226 of the Constitution of

India, praying for issuance of a Writ of Certiorarified mandamus to call for the records on the file of the first respondent and quash the impugned order in PAN ABBFA6073D dated 21.02.2022 in DIN ITBA/PNL/F/271AAC(1)/2021-22/1039970399(1) passed by the first respondent under Section 271AAC(1) of the Income Tax Act, 1961 for the assessment year 2017-18 and direct the first respondent to keep the penalty proceeding initiated under Section 271AAC(1) of the Act in abeyance until disposal of the quantum appeal filed by the petitioner under Section 246A of the Act on 06.12.2021 in acknowledgment number 987662850061221 against the assessment order dated 27.09.2021 under Section 143 (3) read with Section 147 read with Section 144B of the Act.

In both WPs

For Petitioner : Mr.N.V.Narayanan

For Respondents : Mr.A.N.R.Jayapratap
Junior Standing Counsel

COMMON ORDER

The petitioner is an assessee under the respondents. For the assessment year 2017-18 after completing the assessment under Section 147 read with Section 144B of the Income Tax Act, 1961 (in short 'the Act'), assessment order was passed on 27.09.2021.

2. As against the said assessment order, though belatedly due to Covid-19 situation, the petitioner assessee filed appeal before the Appellate Authority on 24.02.2022. Since there is a delay in filing the appeal, delay condonation is yet to be completed, however it is the fact that, the appeal though filed belatedly, it is pending before the Appellate Authority as on date.

3. In the meanwhile, pursuant to the assessment order, the Revenue initiated penalty proceedings under two provisions of the Act, viz., Section 270A and 271AAC separately. Those proceedings came to an end, under which, penalty oder under Section 270A of the Act was issued on 24.02.2022. Like that, penalty order under Section 271AAC was also issued against the petitioner assessee on 21.02.2022. Challenging these penalty orders, these writ petitions have been filed.

4. Heard Mr.N.V.Narayanan, learned counsel appearing for the petitioner, who would submit that, since appeal has been filed against the very assessment order before the Appellate Authority, where, the appeal is still pending, before which, if the penalty proceedings concluded in the impugned orders are given effect to, that would greatly prejudice the interest of

the petitioner as that would make indirectly otiose the appeal proceedings pending before the Appellate Authority against the assessment order, therefore, the learned counsel seeks indulgence of this Court against the impugned penalty proceedings.

5. Heard Mr.A.N.R.Jaya Pratap, learned Standing Counsel for the respondents, who would submit that, as against the assessment order dated 27.09.2021, appeal should have been filed in time, but admittedly this appeal has been filed only on 06.12.2021. Therefore, there is a delay in filing the appeal which is yet to be condoned, hence, at this juncture, since the Revenue is not prevented or precluded from proceeding against the petitioner assessee, to impose penalty under Section 270A as well as 271AAC, those proceedings since have already been initiated were concluded and therefore, these impugned proceedings cannot be said to be unlawful or infirm, hence, no interference is required, he submitted.

6. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

7. As has been rightly pointed out by the learned counsel for the petitioner assessee, against the assessment order dated 27.09.2021, regular appeal has been filed before the Commissioner (Appeals) or Appellate Authority though belatedly due to Covid-19 situation and the said appeal including the condone delay petition seems to be pending before the Appellate Authority.

8. When that being so, if these penalty proceedings which are concluded in the impugned orders in both the writ petitions are permitted to be executed, certainly that will prejudice the interest of the petitioner as the main issue with regard to the quantum made in the assessment order dated 27.09.2021 itself is the subject matter before the Appellate Authority, hence these penalty proceedings can await for sometime till the decision is taken by the Appellate Authority in the appeal.

9. In that view of the matter, this Court is inclined to dispose of these writ petitions with the following orders:

(i) That the impugned proceedings shall be kept in abeyance till a decision is taken by the Appellate Authority in the appeal filed by the petitioner dated 06.12.2021 against the order of assessment dated 27.09.2021. It is needless to mention that, once a decision has come from the Appellate Authority depending upon the outcome of the same, the further course of action with regard to the impugned orders i.e., the penalty proceedings can be decided by the Revenue.

(ii) The Appellate Authority is hereby directed to take up the appeal including the condone delay petition and decide the same as early as possible preferably within six months from the date of receipt of a copy of this order.

10. With these directions, both the Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Sgl

To

1. Additional/Joint/Deputy/Assistant Commissioner
   of Income Tax, Income Tax Officer,
   National e-Assessment Centre, Delhi.

2. The Income Tax Officer,
   Non Corp Ward 3(2),
   Coimbatore.

+2ccs to Mr.A.P.Srinivas, SSC for IT S.R.No.25794

W.P.Nos.9200 & 9206 of 2022

RK(CO)
PM/19/07/2022