CMP.No.7515 of 2022
in
W.A.No.457 of 2022

R. MAHADEVAN, J.
and
J.SATHYA NARAYANA PRASAD, J.

(Order of the court was made by R.Mahadevan, J.)

The petitioner / respondent / assessee has come up with this miscellaneous petition seeking to modify the judgment dated 24.03.2022 passed by this court in WA.No.457 of 2022.

2.In the judgment dated 24.03.2022, which is sought to be modified herein, this court, after hearing the learned senior counsel appearing on either side, disposed of the aforesaid writ appeal by modifying the order of the learned Judge dated 01.02.2022 in WP.No.1360 of 2022, the operative portion of which is quoted below for ready reference:

> *"20.Thus, for the discussions held above, this court, in order to protect the interest of the revenue as well as the assessee and sub-serve the interests of justice, issues the following directions:*
>
> *(i)The respondent / assessee shall file an application for stay, if not filed earlier, before the CIT(A) within a period of two weeks from the date of receipt of a copy of this judgment;*
>
> *(ii)On filing of such an application, within a period of four weeks therefrom, the CIT(A) shall take up the same and pass appropriate orders, with respect to stay of the demand raised as deems it fit, after providing due opportunity of hearing to both sides, and thereafter, on compliance, pass appropriate orders, on the direction petition said to have been pending, so as to lift the lien as regards the balance deposits to the respondent / assessee, as directed by the Hon'ble Apex Court by order dated 04.03.2020."*

3.It is now averred in the affidavit filed in support of this miscellaneous petition that at the time of filing the writ appeal viz., WA.No.457 of 2022 by the appellant / department, the appeal preferred by the petitioner / assessee is pending before the Commissioner of Income Tax (Appeals). However, during the pendency of the writ appeal before this court, the CIT(A) by order dated 03.03.2022, dismissed the assessee's appeal and the remedy now, available to them, as per section 250 of the Income Tax Act, is to prefer an appeal before the Income Tax Appellate Tribunal (ITAT). Yet, the copy of the said order was not made available to the petitioner / assessee and hence, the same was not produced for perusal of this court at the time of hearing the writ appeal and the said factum was also not brought to the notice of this court inadvertently. As a result, by judgment dated 24.03.2022, the writ appeal no.457 of 2022 was disposed of, with certain directions to the CIT(A), on the premise that the appeal and the direction application filed by the petitioner / assessee were pending. At present, the petitioner/ assesseee is in the process of preferring an appeal along with stay application before the ITAT as against the order of the CIT(A) dated 03.03.2022. Therefore, it is just and necessary to modify the order so passed by this court in the writ appeal by issuing the same directions to the ITAT, instead of CIT(A).

4.Pointing out clause 18(f) of the order of the Hon'ble Supreme Court in Civil Appeal No.1992 of 2020 dated 04.03.2020 to the effect that "*the amount of Rs.495,24,73,287/- deposited towards payment of tax and the amount of Rs.2806,40,15,294/- which stands deposited and invested in the form of Fixed Deposit Receipts shall be subject to the decision to be taken by the concerned Authority on merits or to such direction as may be issued by the Appellate Authority*" and as of now, the matter is going to be seized of by the appellate authority viz., ITAT, the learned counsel for the petitioner / assessee prayed for appropriate direction to the ITAT as regards the lift of lien created on the fixed deposit receipts, so as to enable the petitioner / assessee to utilise the funds kept with the department without any utilisation.

5.On the other hand, the learned Additional Solicitor General of India appearing for the respondent authorities fairly conceded the submissions made on the side of the petitioner / assessee relating to the passing of the order by the CIT(A) on 03.03.2022 during the pendency of the writ appeal filed by them and due to inadvertent mistake, the said fact was not drawn to the attention of this court, while disposing of the said writ appeal. Therefore, he has no objection for modifying the order by this court in the writ appeal to that extent alone. He also submitted that it may be left open to the ITAT for passing any orders on merits and as per law.

6.Heard both sides.

7.In view of the change in circumstances during the pendency of the writ appeal filed by the appellant / department that the appeal preferred by the petitioner / assessee was dismissed by the CIT(A) on 03.03.2022 and having regard to the inadvertent mistake committed by the parties that the said fact was not brought to the knowledge of this court at the time of disposal of the said writ appeal, this court is inclined to modify the operative portion of the judgment dated 24.03.2022 passed in WA.No.457 of 2022 in a pragmatic manner, which reads as under:

> "If the petitioner / respondent / assessee is aggrieved by the order dated 03.03.2022 passed by the CIT(A), it is open to them to challenge the same by filing an appeal along with stay application before the ITAT. On such filing, the ITAT shall consider the same, in the light of the contentions raised by the petitioner / assessee and pass appropriate orders, on merits and in accordance with law, after affording due opportunity of personal hearing to them, as expeditiously as possible. The petitioner / assessee is also at liberty to make all the pleas raised herein for lifting the lien created on

the fixed deposit receipts made by them before the ITAT and on such plea, the ITAT shall decide the same, on merits and as per law and also in the light of the directions issued by the Hon'ble Supreme Court in CA.No.1992 of 2020 on 04.03.2020".

8.Accordingly, paragraph 20 of the judgment dated 24.03.2022 passed in WA.No.457 of 2022 is modified and this miscellaneous petition is disposed of.

[R.M.D., J.] **[J.S.N.P., J.]**
25.04.2022

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Note: Issue order copy on 26.04.2022

R. MAHADEVAN, J.
and
J.SATHYA NARAYANA PRASAD, J.

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