IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.11.2021

PRONOUNCED ON : 04.03.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.18447 of 2021
and WMP.Nos.19670 & 19672/ 2021

(Through Video Conferencing)

M/s.Karur KCP Packaging Limited,
Represented by its Liqudator
Aneetha S. ... Petitioner

vs.

The Deputy Commissioner of Income Tax,
Central Circle 2(1) Chennai,
1st Floor, Investigation Building,
No.46(Old No.108),
Mahatma Gandhi Road,
Chennai 600 034. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the respondent and quash the impugned order in ITBA/AST/S/143(3)/2021-22/1033681652(1) dated 25.06.2021 passed by the respondent and consequently direct the respondent to pass a fresh assessment order after granting to the petitioner sufficient opportunity of being heard and in accordance with law.

For Petitioner : Mr. R.Sivaraman

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel.

O R D E R

The petitioner Company is under liquidation and it is represented by a liquidator, who was originally appointed as an Interim Resolution Professional (IRP) and thereafter, as a Resolution Professional and eventually as a Liquidator pursuant to the orders passed by the National Company Law Tribunal, Chennai. The liquidator who was appointed as an Interim Resolution Professional (IRP) failed to reply to the intimation sent by the Jurisdictional Assistant Commissioner of Income Tax on 06.06.2019 to finalize the assessment.

2. It is the case of the petitioner (now represented by the liquidator appointed by NCLT, Chennai) that an assement order has been passed on 25.06.2021 by the respondent. It is submitted that the registered office of the petitioner company is situated in Union Territory of Puducherry and within the jurisdiction of the Assistant Commissioner of Income Tax Department, DP Thottam, Behind Ananda Inn, Muthaiapet, Purcherry 605003. The learned counsel for petitioner submits that though the notice has been received at the registered office of the petitioner in Puducherry, the liquidator (formerly IRP and later as a RP) was unaware of the same as she is from Chennai. It is submitted that the registered office of the petitioner company also had no staff and therefore, the notice is proposing to finalize the assessment was not brought to the knowledge of the petitioner represented by its liquidator appointed pursuant to order dated 15.03.2021 of the NCLT in CP/1275/IB/2018.

3. The learned counsel for writ petitioner further submits that the dispute is in a narrow compass regarding release of certain assets of the company under liqudation and if one more opportunity is given to the liquidator, the petitioner will be able to convince the respondent to pass appropriate orders on merits.

4. Defending the impugned order, the learned counsel for the respondent submits that notice preceeding the impugned order was in terms of Section 282 of the Income Tax Act 1961. It is submitted that service of the notice or summons or requisition or order or any other communication under this Act may be made by delivering or transmitting copy thereof to the persons named therein and in this case it was followed.

5. It is submitted that assessment is based on PAN number and the communications are sent to the assessee, based on the e-mail IDs and the address given to the department. It is submitted that it was incumbent on the part of the liquidator who was formerly appointed as IRP and thereafter RP ought to have taken note of this e-mail IDs so as to comply with the requirements of the Income Tax Act and therefore submits that no interference can be made. That apart, it is submitted that the petitioner company is under liquidation and eventually wound up and there is no threat of any recovery proceedings and therefore, the impugned order cannot be interfered with.

6. Alternatively, the learned counsel for the respondent submits that the petitioner who is represented by the liquidator can file an appeal before the Commissioner of Income Tax appeals on merits and therefore, the writ petition is liable to be dismissed.

7. The Learned counsel for the respondent has also placed reliance on a decision of the Full Bench of the Hon'ble Supreme Court in PCIT Vs. Iven Interactive Pvt. Ltd. in Civil Appeal No. 8132 of 2019. A specific reference was made to paragraph No.7 from the said judgment.

8. By way of rejoinder, the learned counsel for writ petitioner submits that the aforesaid decision cannot be applied to the facts of the present case, inasmuch as the petitioner company is under liquidation and that there is no dispute that no notice was issued to the petitioner by the respondent after there was a transfer to liquidator under Section 127 of the Act.

9. The learned counsel for respondents submits that the notice was issued on 06.06.2019 by the jurisdictional Income Tax Officer namely the Assisstant Commissioner of Income Tax and that thereafter order dated 15.03.2021 was passed by NCLT in I.A.No./1202/2020 in CP/1275/IB/2018 and no notice as is contemplated under Section 178 of Income Tax Act was issued to the petitioner.

10. Heard learned counsel for the petitioner and the learned counsel for respondent and perused the documents. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent. The petitioner company is under liquidation. In terms of order dated 15.3.2021, the National Company Law Tribunal has stated that the liquidator shall give necessary intimation to the Income Tax Department. Regarding other fiscal and regulatory authorities which govern the petitioner, the liquidator was also required to duly intimate about the order of liquidation.

11. Section 282 of the Income Tax Act, reads as under:-
Service of notice generally.

> 282. (1) The service of a notice or summon or requisition or order of any other communication under this Act (hereafter in this section referred to as ''communication'') may be made by delivering or transmitting a copy thereof, to the person therein named.

(a) by post or by such courier services as may be approved by the Board; or

(b) in such manner as provided under the Code of Civil Procedure, 1908 (5 of 1908) for the purposes of service of summons; or

(c) in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000 (21 of 2000); or

(d) by any other means of transmission of documents as provided by rules made by the Board in this behalf.

(2) The Board may make rules providing for the addresses (including the address for electronic mail or electronic mail message) to which the communication referred to in sub-section(1) may be delivered or transmitted to the person therein named.

Explanation.- For the purposes of this section, the expressions ''electronic mail'' and ''electronic mail message'' shall have the meanings as assigned to them in Explanation to section 66A of the Information Technology Act, 2000(21 of 2000).]''

12. Section 178 of the Income Tax Act deals with the Company under liquidation. Section 178 reads as under:-

"Company in liquidation.

178.(1) Every person—

(a) who is the liquidator of any company which is being wound up, whether under the orders of a court or otherwise ; or

(b) who has been appointed the receiver of any assets of a company,(hereinafter referred to as the liquidator) shall, within thirty days after he has become such liquidator, give notice of his appointment as such to the [Assessing] Officer who is entitled to assess the income of the company.

(2) The [Assessing] Officer shall, after making such inquiries or calling for such information as he may deem fit, notify to the liquidator within three months from the date on which he receives notice of the appointment of the liquidator the amount which, in the opinion of the [Assessing] Officer, would be sufficient to provide for any tax which is then, or is likely thereafter to become, payable by the company.

(3) The liquidator—

(a) shall not, without the leave of the [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner], part with any of the assets of the company or the properties in his hands until he has been noticed by the [Assessing] Officer under sub-section (2) ; and (b) on being so notified, shall set aside an amount, equal to the amount notified and, until he so sets aside such amount, shall not part with any of the assets of the company or the properties in his hands :

Provided that nothing contained in this sub-section shall debar the liquidator from parting with such assets or properties for the purpose of the payment of the tax payable by the company or for making any payment to secured creditors whose debts are entitled under law to priority of payment over debts due to Government on the date of liquidation or for meeting such costs and expenses of the winding up of the company as are in the opinion of the [[Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner] reasonable.

(4) If the liquidator fails to give the notice in accordance with sub-section (1) or fails to set aside the amount as required by sub-section (3) or parts with any of the assets of the company or the properties in his hands in contravention of the provisions of that sub-section, he shall be personally liable for the payment of the tax which the company would be liable to pay :

Provided that if the amount of any tax payable by the company is notified under sub-section (2), the personal liability of the liquidator under this sub-section shall be to the extent of such amount.]

(5)Where there are more liquidators than one, the obligations and liabilities attached to the liquidator under this section shall attach to all the liquidators jointly and severally.

(6) The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force [except the provisions of the Insolvency and Bankruptcy Code, 2016].''

13. All through the period during the course of assessment even prior to the above order passed on 15.3.2021 by the National Company Law Tribunal for liquidating the petitioner, the petitioner was represented by the liquidator in the capacity of an IRP and later as an RP. The petitioner company is located in Union Territory of Puducherry whereas the liquidator is operating from Chennai. Though it would have been ideal on the part of the liquidator to give a suitable intimation to the respondent Income Tax Department even prior to order of the liquidation that the petitioner company was represented by the liquidator in the capacity of an IRP and later as an RP, the fact remains that there was some failure on the part of the liquidator.

14. The liquidator has given only postfacto intimated after the assessment order dated 25.6.2021 came to be passed by the respondent. Since the assets of the petitioner company is to be distributed among the creditors in terms of the provisions of the Companies Act, 2013, it would be unfair to deny legitimate dues that may be payable to the secured and unsecured creditors, if indeed, tax due from the petitioner was much lesser.

15. Therefore, to meet the ends of justice, Iam inclined to quash the impugned order and remit the case back to the respondent to pass a fresh assessment order preferably within a period of 90 days from the date of receipt of a copy of this order. The petitioner represented by its liquidator shall file necessary reply to the notices and intimations in a period of 30 days. The impugned order stands quashed by this order and it

shall be treated as a corrigendum to the show cause notice, if any, issued earlier to the petitioner. All issues on merits are left to be canvassed before the respondent.

16. This Writ petition stands allowed in terms of the above observation. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kkd

To

The Deputy Commissioner of Income Tax,
Central Circle 2(1) Chennai,
1st Floor, Investigation Building,
No.46(Old No.108),
Mahatma Gandhi Road,
Chennai 600 034.

W.P.No.18447 of 2021

pmk(CO)
A.SK(25/03/2022)