



W.P.No.32820 of 2022

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2022

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THE HON'BLE Mr.JUSTICE M.SUNDAR

W.P.No.32820 of 2022

and

W.M.P.No.32224 of 2022

in

W.P.No.32820 of 2022

M/s.Empee Distilleries Limited
Rep. by its Authorized Signatory Mr.P.K.Das
having office at 72
Greens Road, Thousand Lights
Chennai-600 006.

... Petitioner

-Vs.-

1. The Commissioner of Income Tax (Appeals)
National Faceless Appeal Centre (NFAC)
New Delhi.
2. The Deputy Commissioner of Income tax
Corporate Circle 2(1), Chennai
M.G.Road, Nungambakkam,
Chennai-600 034.
3. The Assistant Commissioner of Income tax
Corporate Circle 2(1), Chennai
M.G.Road, Nungambakkam,
Chennai-600 034.

... Respondents



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Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration declaring the demand of the respondents to the tune of Rs.96,34,330/- or such other amount in respect of the AY 2007-08 on the basis of the order dated 26.09.2022 bearing DIN & Order No.ITBA/NFAC/S/250/2022-23/1045941625(1) u/s.250 of the Income Tax Act passed by the 1st respondent, confirming the order dated 06.02.2015 u/s.143(3) r/w Section 147 of the Income tax Act passed by the 2nd respondent as null and void, non-est in law and abated by operation of law, in view of the approval of the Resolution Plan in the matter of Empee Distilleries Limited on 20.01.2020 in CP/280/IB/2018 by the Hon'ble National Company Law Tribunal.

For Petitioner : Mr.AR.L.Sundaresan
Senior counsel
instructed by Mr.AR.Karthik Lakshmanan

ORDER

Captioned main writ petition is in the Admission Board today.

2. Mr.AR.L.Sundaresan, learned Senior Advocate, instructed by Mr.AR.Karthik Lakshmanan, learned counsel on record for writ petitioner is before this Court.



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3. Writ petitioner - 'Empee Distilleries Limited' ['EDL' for the sake of brevity] is a public limited company incorporated in India. At the instance of creditor banks, EDL went into 'Corporate Insolvency Resolution Proceedings' ['CIRP'] under 'The Insolvency and Bankruptcy Code, 2016' [hereinafter 'IBC' for the sake of convenience]. The 'National Company Law Tribunal' ['NCLT'] Chennai made an order dated 20.01.2020 *inter alia* approving a resolution plan. However, the matter was carried in appeal vide Company Appeal (AT) (Insolvency)No.551 of 2020 and the Appellate Authority, New Delhi - 'National Company Law Appellate Tribunal' ['NCLAT'] by order dated 27.08.2020 dismissed the appeal. This order of NCLAT was carried to Hon'ble Supreme Court vide Civil Appeal No.3283 of 2020 and by order dated 26.11.2020, Hon'ble Supreme Court dismissed the appeal confirming the order of NCLAT.

4. A perusal of the NCLT order dated 20.01.2020 brings to light that CIRP qua EDL commenced on 01.11.2018.



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5. Be that as it may, much before commencement of CIRP, second respondent made an assessment order dated 06.02.2015 and this assessment order is under Section 143(3) read with Section 147 of 'The Income-tax Act, 1961 (43 of 1961)' [hereinafter 'IT Act' for the sake of brevity]. This assessment order was carried in appeal by EDL by way of a regular statutory appeal under Section 250 of IT Act and this appeal was filed on 04.03.2015. EDL did not respond to the notices from the Appellate Authority but the Appellate Authority perused the records of EDL, returned a finding that it finds no reason to interfere with the order of Assessing Officer dated 06.02.2015 and dismissed the appeal vide order dated 26.09.2022 bearing reference DIN & Order No. : ITBA/NFAC/S/250/2022-23/1045941625(1). The matter qua IT Act proceedings stands there. At this juncture, captioned writ petition has been filed in this Court on 30.11.2022.

6. After some arguments, as the prayer seeks is for a writ of declaration *inter alia* qua the order of Appellate Authority, leave of this Court was sought for withdrawing the captioned writ petition.



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7. Mr.AR.Karthik Lakshmanan, learned counsel on record for writ petitioner has made an endorsement in the case file and a scanned reproduction of the same is as follows:

I may be permitted to withdraw
the writ petition with liberty
to file a writ of certiorari.

Ar. Karthik

Ar. Karthik Lakshmanan

E.No. 3638/16

Counsel for Petitioner

7-12-22

8. A fervent plea was made to preserve all the rights and contentions of EDL to file a fresh / new writ petition on the same cause of action with appropriate prayer/s. Request acceded to with a rider that if such a course is adopted, the fresh / new writ petition will be tested on its own merits and in accordance with law in the Admission Board and for specificity, it is also made clear that no opinion or view has been expressed in these proceedings.



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9. Captioned Writ Petition is disposed of as closed / withdrawn.

Consequently captioned Writ Miscellaneous Petition is also disposed of as closed / withdrawn. There shall be no order as to costs.

07.12.2022

Speaking/Non-speaking order

Index: Yes/No

Internet : Yes/No

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To

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