IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.10.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.11841 of 2022
and W.M.P.No.11278 of 2022

Pandian Anbalagan

... Petitioner

Vs.

Income Tax Officer,
Corporate Ward 6(3),
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai 600 034.

... Respondent

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records contained in order dated 30.03.2022 bearing ITBA/AST/S/147/2021-22/1042158368(1) passed by the respondent for PAN:AASCS0886M for AY 2015-16 and to quash it as illegal, arbitrary and unlawful.

For Petitioner : Mr.Suhrith Parthasarathy

For Respondent : Ms.S.Premalatha,
Junior Standing counsel
for Mr.R.S.Balaji,
Senior Standing counsel

ORDER

This writ petition has been filed challenging the impugned order dated 30.03.2022 bearing ITBA/AST/S/147/2021-22/1042158368(1) passed by the respondent for PAN:AASCS0886M for AY 2015-16.

2. The learned counsel for the petitioner would submit that the petitioner was the Director of the Speed & Safe Freight Systems India Private Limited and the said Company was struck off from the official register of companies with effect from 29.10.2019. In order to prove the same, he had also produced a Letter bearing No.ROC/CNN/STK-7/2019 dated 29.10.2019 issued by the Ministry of Corporate Affairs, in which his company name was listed at Serial No.1008. Under the said circumstances, the petitioner had received a notice under Section 148 of the Income Tax Act on 31.03.2021 for reopening of assessment for the year 2015-16.

3. The learned counsel would further submit that the assessment order cannot be reopened against the company, which was already struck off. Hence, the respondent/Department have to file an application for revival under Section 252 of the Companies Act, read with Rules 11 and 87 of the NCLT Rules, within the period mentioned therein. After the revival of the Company only, the Authority will get power to reopen the assessment and pass further orders. However, in the present case, though the petitioner had referred the aforesaid procedure of revival of Company, the impugned order was passed by the respondent without application of mind. Hence, he would contend that the said impugned order is liable to be quashed.

4. On the other hand, the learned counsel appearing for the respondent has filed a counter and submitted that under Sections 176(5) and 176(7) of the Income Tax Act, the respondent/Department is entitled to pass assessment order against the Principal Officer of the struck off Company.

5. Heard the learned counsel for the petitioner and the respondent and also perused the materials available on record.

6. It is admitted by both sides that against the Company, which was struck off as early as on 21.10.2019, the re-assessment notice dated 31.03.2021 was issued and the re-assessment order dated 30.03.2022 was passed by the respondent.

7. As far as the submission made by the learned counsel for the respondent is concerned, Section 176 of the Income Tax Act mainly talks about the discontinued business and it does not mention anything about struck off of the company. Further, Section 176 of the Income Tax Act states that if any company discontinued from business and had not carried on any other business, the re-assessment order can be passed against the Principal Officer of the Company. However, the assessment order cannot be passed once the company is struck off, since the same will be construed as passing of order against a dead person.

8. Therefore, this Court is of the view that the right course available for the respondent/Department is only to approach the NCLT in terms of provisions of Section 252 of the Companies Act read with Rules 11 and 87 of the NCLT Rules for the revival of the Company. After revival of the Company, it is open for the respondent/Department to initiate proceedings under Section 147 of the Income Tax Act. Hence, the impugned order is liable to be quashed.

9. In the result, this Writ Petition is allowed. Accordingly, the impugned order dated 30.03.2022 bearing ITBA/AST/S/147/2021-22/1042158368(1) passed by the respondent for PAN:AASCS0886M for AY 2015-16 is quashed. Consequently, the connected miscellaneous petition is also closed.

03.10.2023

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
nsa

KRISHNAN RAMASAMY.J.,

nsa

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03.10.2023

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