IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.01.2025

Coram:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.26677 & 26680 of 2022
and W.M.P.Nos.25734, 25736, 25737 & 25740 of 2022

Mr.R.Deepak
(Former Director of M/s.Benzz
Hospitality Services Private Limited)
No.77, Gajapathy Street,
Shenoy Nagar, Chennai – 600 030.

...Petitioner in both W.Ps

Versus

Income Tax Officer,
Corporate Ward 1(1) Che,
Income Tax Department,
No.121, Aayakar Bhavan, M.G.Road,
Nungambakkam, Chennai – 600 034.

...Respondent in both W.Ps

Prayer in W.P.No.26677 of 2022:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records of the respondent contained in its notice issued under Section 148 of the Income Tax Act, 1961 bearing DIN & Notice No.TBA/AST/S/148/2020-21/1031739058(1) dated 25.03.2021 for AY 2017-18 for PAN AASCS5080K and all proceedings in furtherance thereof, including but not limited to the assessment order passed by the respondent under Section 147 r/w. Section 144 of the Income Tax Act, 1961 bearing DIN & Order No.ITBA/AST/S/147/2021-22/1041915281(1), dated 29.03.2022 and the demand notice issued by the respondent under Section 156 of the Income Tax Act, 1961 bearing DIN & Notice No.ITBA/AST/S/156/2021-22/1041915394(1) dated 29.03.2022 for AY 2017-18 for PAN AASCS5080K and to quash the same as arbitrary, unjust and illegal.

Prayer in W.P.No.26680 of 2022:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records of the respondent contained in its notice issued under Section 148 of the Income Tax Act, 1961 bearing DIN & Notice No.ITBA/AST/S/148/2020-21/1031739057(1) dated 25.03.2021 for AY 2016-17 for PAN AASCS5080K and all proceedings in furtherance thereof, including but not limited to the assessment order passed by the respondent under Section 147 r/w. Section 144 of the Income Tax Act, 1961 bearing DIN & Order No.ITBA/AST/S/147/2021-22/1041913259(1), dated 29.03.2022 and the demand notice issued by the respondent under Section 156 of the Income Tax Act, 1961 bearing DIN & Notice No.ITBA/AST/S/156/2021-22/1041913337(1) dated 29.03.2022 for AY 2016-17 for PAN AASCS5080K and to quash the same as arbitrary, unjust and illegal.

For Petitioner in both W.Ps	:	Mr.Suhrith Parthasarathy
For Respondent in both W.Ps	:	Mr.B.Ramana Kumar, Senior Standing Counsel

COMMON ORDER

In these writ petitions, the petitioner has challenged the Notices dated 25.03.2021 issued under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'IT Act'); Assessment Orders dated 29.03.2022 issued under Section 147 r/w. Section 144 of the IT Act and Demand Notices dated 29.03.2022 issued under Section 156 of the IT Act passed by the respondent herein.

2. The details of the impugned Notices, Assessment Orders and Demand Notices in the present writ petitions are tabulated hereunder:

Sl.No.	Writ Petition No.	Date & DIN Number of Notice issued u/s.148 of the IT Act	Date & DIN Number of the Impugned Assessment Order	Date & DIN Number of the Demand Notice	Assessment Year
1	26677 of 2022	25.03.2021 & ITBA/AST/S/148/2020-21/1031739058(1)	29.03.2022 & ITBA/AST/S/147/2021-22/1041915281(1)	29.03.2022 & ITBA/AST/S/156/2021-22/1041915394(1)	2017-18
2	26680 of 2022	25.03.2021 & ITBA/AST/S/148/2020-21/1031739057(1)	29.03.2022 & ITBA/AST/S/147/2021-22/1041913259(1)	29.03.2022 & ITBA/AST/S/156/2021-22/1041913337(1)	2016-17

3. The case of the petitioner is that pursuant to the Notice issued in

Form No.STK 5 dated 02.08.2019 under sub-section (1) & (4) of Section 248 of the Companies Act, 2013 r/w. Rule 7 of the Companies Rules, 2016 by the Registrar of Companies, the name of the petitioner company was struck off from the Register of Companies. At the time of issuance of impugned Notice dated 25.03.2021, the petitioner company was inoperative. Hence, the petitioner was unaware of the impugned Notices dated 25.03.2021, Assessment Orders dated 29.03.2022 and Demand Notices dated 29.03.2022 issued by the respondent.

4. The learned counsel for the petitioner submitted that the issue involved in these writ petitions is no longer *res integra* and is squarely covered by the judgments of the Hon'ble Supreme Court in the following cases:

(i) Principal Commissioner of Income Tax, New Delhi Vs. Maruti Suzuki India Limited (Civil Appeal No.5409 of 2019) reported in ***2019 (416) ITR 613 (SC)***

(ii) Saraswathi Industrial Syndicate Ltd. Vs. Commissioner of Income Tax reported in ***1990 (186) ITR 278 (SC)***.

4.1. The learned counsel for the petitioner submitted that a Division

Bench of the Bombay High Court while dealing with an identical issue under similar circumstances in ***Jitendra Chandralal Navlani & Anr. Vs. Union of India & Ors. (W.P.No.1069 of 2016 dated 08.02.2024),*** quashed the impugned proceedings initiated by the Department against the petitioners therein.

5. On the other hand, the learned Senior Standing Counsel for the respondent submitted that this writ petition is devoid of merits and hence, it is liable to be dismissed.

5.1. The learned Senior Standing Counsel submitted that as per Section 176(5) & (7) of the IT Act, the Principal Officer of the struck off company is liable to take steps to revive the company and is liable for the affairs of the company including compliance to Notice under Section 148 of the IT Act. In this connection, reliance was placed on the judgment of this Court in ***Income Tax Officer Vs. Pandian Anbalagan (W.A.No.2506 of 2024 dated 05.11.2024)***, wherein, the writ appeal preferred by the Revenue Department was allowed with the following observation:

> *"5. We are of the view that the order is liable to be set aside. It is not open for the Director of a defaulting Company, whose name is struck off from the official Register of Companies, to set aside the order. If at all,*

it was open for the petitioner herein to revive the Company and thereafter espouse the cause of the Company. As far as the independent rights of the Director under Section 179 of the Income Tax Act, 1961, is concerned, it is open for the respondent to defend itself if any proceedings are initiated under Section 179 of the Income Tax Act, 1961."

5.2. The learned Senior Standing Counsel for the respondent submitted that instantly, the Assessing Officer had also written a Letter dated 24.03.2022 to the Standing Counsel before the National Company Law Tribunal (NCLT) to revive the petitioner company, pursuant to which, a Company Petition in C.P.No.162 of 2022 has been filed before the National Company Law Tribunal (NCLT), Chennai for restoration of the petitioner company in the Register maintained by the Registrar of Companies, Chennai. It is further submitted that the aforesaid Company Petition in C.P.No.162 of 2022 was heard on merits and has been reserved for orders.

6. The above submission made by the learned Senior Standing Counsel for the respondent has been fairly conceded by the learned counsel for the petitioner.

7. Considering the above submissions, the impugned Notices dated 25.03.2021, Assessment Orders dated 29.03.2022 and Demand Notices

dated 29.03.2022 passed by the respondent are quashed and the case is remanded back to the respondent to await the final order to be passed by the National Company Law Tribunal (NCLT), Chennai in C.P.No.162 of 2022.

8. This Writ Petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

09.01.2025

mrr

Index : Yes/No

Speaking Order (or) Non-Speaking Order

To

Income Tax Officer,
Corporate Ward 1(1) Che,
Income Tax Department,
No.121, Aayakar Bhavan, M.G.Road,
Nungambakkam, Chennai – 600 034.

C.SARAVANAN, J.

mrr

W.P.Nos.26677 & 26680 of 2022

09.01.2025