IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2026

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.4556 of 2015

M/s Conch Chits & Commercial
Corporation P Ltd.,
Rep. by its Director,
12, 43rd Street, 6th Avenue,
Ashok Nagar, Chennai – 600 083. ... Petitioner

Vs.

The Deputy Commissioner of Income Tax
Corporate Circle 1(2),
121, M.G.Road,
Nungambakkam, Chennai – 34. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the records on the file of the Respondent and quash the impugned proceedings in Corporate Circle 1(2)/2014-15 dated 27.01.2015 along with notice issued by the Respondent under section 148 of the Act dated 27.03.2014.

For Petitioner : M/s.N.V.Balaji

For Respondent : Mr.Avinash Krishnan Ravi
Senior Standing Counsel

ORDER

In this writ petition, the petitioner has challenged the impugned Speaking Order dated 27.01.2025 passed by the respondent, whereby the petitioner's objection dated 30.12.2014 in response to Section 148 Notice dated 27.03.2014 was disposed of.

2. The petitioner company was proceeded against in C.P.No.4 of 1987 by one Madan Lal under the provisions of the Companies Act, 1956, seeking to wind up the affairs of the petitioner company.

3. In the course of the aforesaid proceedings, the Official Liquidator was appointed as Provisional Liquidator by an Order dated 16.03.2007 in C.A.Nos.600 to 602 of 2007 in C.P.No.4 of 1987. Pursuant to the said order, the Official Liquidator took control of the petitioner company and sold some of its assets to discharge its liabilities/debts.

4. It is in this background, recording the report of the Official

Liquidator, this Court passed an order on 27.02.2008 in C.P.No.4 of 1987 (filed by the said Madan Lal to wind up the petitioner company) and C.A.NO.2964 of 2007 (filed by the petitioner company to discharge the Official Liquidator appointed by the aforementioned Order dated 16.03.2007 in C.A.Nos.600 to 602 of 2007 in C.P.No.4 of 1987).

5. Paragraphs 3 to 8 of the said Order dated 27.02.2008 reads as under:

"3. A report dated 21.2.2008 and the note dated 27.2.2008 have been filed by the Official Liquidator, wherein he has stated that on the list furnished by the Ex-Directors about the creditors, it has been ascertained that Rs.3,78,38,141/- is payable to the creditors. It is stated by the Official Liquidator that the available funds in his hand is Rs.7,44,48,807/-. After deducting a sum of Rs.3,78,38,141/- to be disbursed to the depositors/creditors and a sum of Rs.19,36,900/- towards rental advance and expenses, the balance amount to be returned to the promotors/directors is a sum of Rs.3,46,73,766/-.

4. Heard the learned counsel for the applicant and the Official Liquidator.

5. Considering the report and the note filed by the Official Liquidator, the Official Liquidator is directed to return a sum of Rs.3,46,73,766/- to the promotors/directors.

6. In view of the above, the Official Liquidator is *discharged forthwith and the Directors viz., Ajaykumar S/o.M.Subramaniam and M.Sunilkumar S/o.M.Subramaniam of the company shall take over the company.*

7. After disbursing the final payments, if any balance amount is left with Official Liquidator, the same shall be paid to the promotors/directors.

8. Consequent to this order, the learned Official Liquidator shall also hand over all the books of accounts, registers, documents, forms and other records pertaining to the company to the applicants/directors."

6. Although this Court directed that the balance amount, if any, be paid to the promoters/directors in the aforementioned Order dated 27.02.2008, the amounts were correctly paid to the petitioner on 16.04.2008. This was disclosed in the return filed by the petitioner.

7. The excess received and credited to the petitioner company was included for the purpose of determining the petitioner's income while finalising the return for the Assessment Year 2009-2010 on 09.12.2011, in response to the Return of Income filed by the petitioner on 24.11.2009, admitting a loss of Rs.12,68,741/-.

8. The petitioner filed an appeal before the Appellate Commissioner on 06.01.2012 in ITA No. 221/11-12/A-I, which was decided on 27.01.2014. In that order, the Appellate Commissioner directed the Assessing Officer to redo the computation of income together with indexation benefit and short-term capital gain on building without indexation benefit by invoking provisions of Section 50 of the Income Tax Act, 1961, instead of subjecting the entire receipts from the official liquidator to tax under business head which is definitely not an income derived out of business of the petitioner during the year.

9. The relevant portion of the Order dated 27.01.2014 of the Appellate Commissioner is reproduced below:

> *"4.2 ... Since the appellant has not furnished any evidence in the form of sale deed/auction proceeds before me also to ascertain the actual sale proceeds of the property and to meet the ends of justice, I hereby direct the AO to give time of a month or so, which the AO deems it fit, to the appellant to obtain the details of actual sale proceeds as per sale deed / auction proceeds and work out the long-term capital gain on land part with indexation benefit and short-term capital gain on building without indexation benefit by invoking provisions of s.50 of the Act, instead of subjecting the entire receipts from the official liquidator to tax under business head which is definitely not an income derived out of business of the appellant during the year. However, failing to*

produce the above details, the entire amount may be taken as Income from Other Sources without any costs assigning to it, and taxed accordingly. The ground is allowed partly."

10. Pursuant to the aforesaid order, a fresh assessment order was passed *de novo* on 17.10.2016 under Section 143(3), read with Section 147 of the Income Tax Act, 1961.

11. The case of the petitioner is that their entire income was taxed during the Assessment Year 2009-2010, and therefore, there is no scope for re-including it in the income of the petitioner for the said assessment year.

12. It is further submitted that the petitioner cannot be taxed on the same income for the Assessment Year 2008-2009 and again for the Assessment Year 2009-2010.

13. The learned counsel for the petitioner also placed reliance on the proceedings initiated during the pendency of the appeal in terms of the third proviso to Section 147 of the Income Tax Act, 1961, as it stood prior to 01.04.2021.

14. The Learned Senior Standing Counsel for the respondent would submit that the income accrued to the petitioner during the financial year 2007-2008 was liable to tax under the Assessment Year 2008-2009. It is therefore submitted that the impugned proceedings overruling the objection of the petitioner to the reassessment under Section 148 do not warrant any interference.

15. That apart, it is submitted by the Learned Senior Standing Counsel that even if the amount of tax falls in the succeeding Assessment Year 2009-2010, the matter would require a relook in light of the subsequent Order dated 17.10.2016.

16. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent.

17. This is a strange case where the company has not been wound up under the provisions of the Companies Act, 1956, at the behest of the creditors who filed C.A.No.4 of 1987.

18. In the said proceedings, the Official Liquidator was appointed as Provisional Liquidator, and therefore, the company came under the control of the Provisional Liquidator, who liquidated certain assets of the company and transferred the surplus back to the company, although the report had ordered the amount to be paid back to the promoters/directors.

19. If the amounts were directed to be paid back to the promoters/directors, the petitioner company ought to have been liquidated. However, it is noticed that there was no order of the Court directing the winding up of the petitioner company. Even if the company was ordered to be wound up, the Company Court was empowered to recall the winding-up order under Rules 6 and 9 of the Companies (Court) Rules, 1959. In any way, it is evident that the petitioner company was ordered to be wound up.

20. A reading of the Assessment Order dated 19.12.2011, the Appellate Commissioner's Order dated 27.01.2014, and the subsequent *de novo* order dated 17.10.2016 passed for the Assessment Year 2009-2010 makes it clear that the surplus credited to the petitioner was taxed during the Assessment Year 2009-2010. This amount actually ought to have been taxed during the

subject Assessment Year, namely 2008-2009, otherwise there could be a case for interest payable on the said income for belated payment of tax.

21. However, the petitioner company was under the control of the provisional liquidator, who transferred the amount only on 16.04.2008 i.e., during the financial year 2008-2009 ending on 31.03.2009. Therefore, the amount was taxed for the first time on 09.12.2011, which order was subsequently revised by the Order dated 17.10.2016, pursuant to the Order dated 27.01.2014 in ITA No. 221/11-12/A-I of the Appellate Commissioner.

22. Under these circumstances, the impugned order is quashed, and accordingly, this writ petition is allowed. No order as to costs.

10.03.2026

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Neutral Citation : Yes / No

To

The Deputy Commissioner of Income Tax
Corporate Circle 1(2),
121, M.G.Road,
Nungambakkam, Chennai – 34.

C.SARAVANAN, J.

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