2023:KER:81957

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

TUESDAY, THE 19TH DAY OF DECEMBER 2023 / 28TH AGRAHAYANA, 1945

WP(C) NO. 40710 OF 2023

PETITIONER/S:

COVENANT STONES PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE AT SHOP NO. 237(416B), MUKHOLA, VATTIYURKAVU, NETTAYAM P.O, THIRUVANANTHAPURAM, REPRESENTED BY ITS DIRECTOR, SRI. K.C. RAMACHANDRAN, PIN - 695013

BY ADVS.
ANIL XAVIER
GEORGE G.POOTHICOTE
ANN MARY.V.I

RESPONDENT/S:

1. COMMISSIONER OF INCOME TAX (APPEALS)
CENTRAL CIRCLE, COCHIN, POORNIMA BUILDING, MANORAMA JUNCTION, PANAMPILLY NAGAR, COCHIN, PIN - 682036
2. COMMISSIONER OF INCOME TAX (APPEALS)-3
4TH FLOOR, CENTRAL REVENUE BUILDING, I.S. PRESS ROAD, COCHIN, PIN - 682018
3. ASSISTANT COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE, INCOME TAX OFFICE, PUBLIC LIBRARY BUILDING, SHASTRI ROAD, KOTTAYAM, PIN - 686001

OTHER PRESENT:

SUSIE B. VARGHESE-SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19.12.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 19th day of December, 2023

The present writ petition has been filed impugning Ext.P5 order passed by the 2nd respondent. The 2nd respondent has given a conditional stay order in Ext.P5 after considering the facts and circumstances of the case and taking into account the online submissions advanced on behalf of the petitioner.

2.The petitioner has been directed to pay of 20% of the total tax demand raised vide the assessment orders for the assessment years 2014-2015, 2015-2016, 2016-2017, 2017-2018 and 2019-2020. Not only the conditional stay on payment of 20% has been granted but the petitioner has also been given facility of payment of 20% in seven equal installments. The said 20% amount is directed to be paid on or before 25.03.2024. The first installment has been directed to be paid on or before 25.09.2023. The petitioner instead of complying the said conditional stay order has approached this court, impugning the very same conditional stay order in Ext.P5.

3.Learned counsel for the petitioner submits that the 2nd respondent has not considered the merit of the case and following the circular, has passed the order.

4.This court therefore asked the learned counsel for the petitioner to make submissions on the merit of the case.

5.The learned counsel for the petitioner has submitted that the assessment orders after survey under Section 133A of the Income Tax

Act had been finalized merely on the basis of the statements of the Director and Managing Director who had retracted later on. This submission does not appear to be correct. The assessment order would disclose that not only the statements of the Director and Managing Director were taken into consideration but the other incriminating material including the excel sheets and digital datas maintained in the computers and laptops had also been examined before adding the undisclosed income to the returned income of the petitioner. Therefore, I do not find much substance in the present writ petition that the merit of the assessment orders have not been considered while passing the impugned Ext.P5 order granting conditional stay.

In that view of the matter, the present writ petition is dismissed. The petitioner was granted time to pay the first instalment on or before 25.09.2023, the said time is extended to 30.12.2023 and the last and final installment has to be paid on or before 30.06.2024. Needless to say that the observation made herein will not prejudice the appellate authority to consider the case of the petitioner on merit.

The writ petition is dismissed accordingly.

Sd/-
DINESH KUMAR SINGH
JUDGE

SJ

APPENDIX OF WP(C) 40710/2023

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE ASSESSMENT ORDER DATED 30/09/2021 FOR AY 2014-15 ISSUED BY THE 2ND RESPONDENT, ASSESSING OFFICER
Exhibit P1(a)	TRUE COPY OF THE ASSESSMENT ORDER DATED 07/12/2021 FOR AY 2015-16 ISSUED BY THE 2ND RESPONDENT, ASSESSING OFFICER
Exhibit P1(b)	TRUE COPY OF THE ASSESSMENT ORDER DATED 30/09/2021 FOR AY 2016-17 ISSUED BY THE 2ND RESPONDENT, ASSESSING OFFICER
Exhibit P1(c)	TRUE COPY OF THE ASSESSMENT ORDER DATED 16/11/2021 FOR AY 2017-18 ISSUED BY THE 2ND RESPONDENT, ASSESSING OFFICER
Exhibit P1(d)	TRUE COPY OF THE ASSESSMENT ORDER DATED 30/09/2021 FOR AY 2018-19 ISSUED BY THE 2ND RESPONDENT, ASSESSING OFFICER
Exhibit P1(e)	TRUE COPY OF THE ASSESSMENT ORDER DATED 30/09/2021 FOR AY 2019-20, ISSUED BY THE 2ND RESPONDENT, ASSESSING OFFICER
Exhibit P2	TRUE COPY OF THE ATTACHMENT ORDER DATED 16/08/2022 FOR RECOVERY OF AMOUNT, ISSUED BY THE 3RD RESPONDENT, ASSESSING OFFICER
Exhibit P3	TRUE COPY OF THE CBDT INSTRUCTION NO. 1914 DATED 02/12/1993
Exhibit P4	TRUE COPY OF THE JUDGMENT DATED 21/12/2022 OF THE HIGH COURT OF KERALA IN WP(C) NO. 38390/2022
Exhibit P5	TRUE COPY OF THE ORDER ON STAY PETITION DATED 13/09/2023 BY THE 2ND RESPONDENT
Exhibit P6	TRUE COPY OF THE NOTICE OF DEMAND DATED 22/09/2023 OF THE 3RD RESPONDENT
Exhibit P7	TRUE COPY OF THE NOTICE DATED 18/04/2023 ISSUED IN THE APPEALS FOR THE ASSESSMENT YEAR 2014-15, ISSUED BY THE 2ND RESPONDENT
Exhibit P7(a)	TRUE COPY OF THE NOTICE DATED 18/04/2023 ISSUED IN THE APPEALS FOR THE ASSESSMENT YEAR 2015-16, ISSUED BY THE 2ND RESPONDENT
Exhibit P7(b)	TRUE COPY OF THE NOTICE DATED 18/04/2023 ISSUED IN THE APPEALS FOR THE ASSESSMENT YEAR 2016-17, ISSUED BY THE 2ND RESPONDENT

Exhibit P7(c)	TRUE COPY OF THE NOTICE DATED 18/04/2023 ISSUED IN THE APPEALS FOR THE ASSESSMENT YEAR 2017-18, ISSUED BY THE 2ND RESPONDENT
Exhibit P7(d)	TRUE COPY OF THE NOTICE DATED 18/04/2023 ISSUED IN THE APPEALS FOR THE ASSESSMENT YEAR 2018-19 ISSUED BY THE 2ND RESPONDENT
Exhibit P7(e)	TRUE COPY OF THE NOTICE DATED 18/04/2023 ISSUED IN THE APPEALS FOR THE ASSESSMENT YEAR 2019-20, ISSUED BY THE 2ND RESPONDENT
Exhibit P8	TRUE COPY OF THE APPEAL NOTE FILED BY THE PETITIONER IN THE APPEALS FOR THE ASSESSMENT YEAR 2014-15
Exhibit P8(a)	TRUE COPY OF THE APPEAL NOTE FILED BY THE PETITIONER IN THE APPEALS FOR THE ASSESSMENT YEAR 2015-16
Exhibit P8(b)	TRUE COPY OF THE APPEAL NOTE FILED BY THE PETITIONER IN THE APPEALS FOR THE ASSESSMENT YEAR 2016-17
Exhibit P8(c)	TRUE COPY OF THE APPEAL NOTE FILED BY THE PETITIONER IN THE APPEALS FOR THE ASSESSMENT YEAR 2017-18
Exhibit P8(d)	TRUE COPY OF THE APPEAL NOTE FILED BY THE PETITIONER IN THE APPEALS FOR THE ASSESSMENT YEAR 2018-19
Exhibit P8(e)	TRUE COPY OF THE APPEAL NOTE FILED BY THE PETITIONER IN THE APPEALS FOR THE ASSESSMENT YEAR 2019-20