* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

+ Writ Petition Nos.9408 and 11373 of 2017

% 20-10-2017

M.Hanumantha Reddy, S/o.Late M.Papa Reddy,
Aged about 85 years, Temporarily presently residing
at H.No.6-1-528, Khairatabad, Hyderabad
… Petitioner in W.P.No.9408 of 2017

Smt. S.Aruna Reddy @ S.Arundathi Reddy,
W/o. S.Prabhakar Reddy, Aged about 68 years,
R/o. F-302, Dr. YSR Residency, Panchvati Layout,
Manikonda, Hyderabad-500 089 (TS)
… Petitioner in W.P.No.11373 of 2017

Vs.

$ 1. Prl. Commissioner of Income Tax-7, 3rd Floor,
A Block, I.T. Towers, A.C. Guards, Hyderabad

2. Union of India, Ministry of Finance,
Dept. of Revenue, Rep. by its Secretary (Revenue),
North Block, New Delhi-110 001

3. Commissioner of Income Tax (Appeals)-7,
3rd Floor, A Block, I.T. Towers, A.C. Guards, Hyderabad

4. Asst. Commissioner of Income Tax, Circle 14(1),
I.T. Towers, Masab Tank, Hyderabad [in WP.9408/2017]

4. Income Tax Officer, Ward-8(2), I.T. Towers,
Masab Tank, Hyderabad [in WP.11373/2017]
… Respondents

! Counsel for the Petitioners: Mr. K.Ramakanth Reddy

Counsel for Respondents 1 to 4: Ms. M.Kiranmayee,
Senior Standing Counsel

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> Head Note:

? Cases referred:
Nil.

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
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Writ Petition Nos.9408 and 11373 of 2017

Common Order: (per V.Ramasubramanian, J.)

The petitioners have come up with the above writ petitions challenging orders of assessment passed on 14-12-2016 and 27-12-2016 respectively under the Income Tax Act, 1961.

2. Heard Mr. K.Ramakanth Reddy, learned counsel for the petitioners and Ms. M.Kiranmayee, learned Senior Standing Counsel for the respondents.

3. The main grievance of the petitioners as against the impugned orders of assessment is that both of them are Non- Resident Indians within the meaning of Section 6 of the Act and that the impugned orders of assessment have been passed beyond the period of limitation.

4. It appears from the material papers filed before us that against the orders of assessment, the petitioners have already filed statutory appeals before the First Appellate Authority. The petitioners have also paid the tax as reflected in the returns filed by them. Therefore, the question of the petitioners being asked to pay anything more for pursuing the appeals, leading to some kind of hardship may not be there in these cases.

5. Insofar as the question of limitation is concerned, it is seen that the orders of assessment in both these cases relate

to the Assessment Year 2009-10. The contention of the petitioners is that the Statute prescribed only a period of limitation of two years, until the year 2012 and that the period of limitation was enlarged to six years only by the amendment of the year 2012. Therefore, the contention of the learned counsel for the petitioners is that in respect of the Assessment Year 2009-10, the enlarged period of limitation as provided by the amendment of the year 2012 cannot be taken advantage of.

6. But the reply of the learned Senior Standing Counsel for the Department is that the petitioners filed their returns as residents and that the question of limitation being a mixed question of law and fact, the petitioners should agitate the same before the First Appellate Authority.

7. We have carefully considered the rival submissions. Admittedly, the petitioners have filed statutory appeals within the period of limitation. The petitioners are not bound to pay anything more than what they have already paid, for prosecuting the appeals. In other words, the petitioners may not suffer any hardship if the writ petitions are disposed of directing them to pursue the appeals.

8. Therefore, in the facts and circumstances of the case, the writ petitions are disposed of permitting the petitioners to prosecute the appeals. The First Appellate Authority viz., the concerned Commissioner of Income Tax (Appeals) shall hear the appeals, in accordance with law, consider all the

objections including the objections relating to the status of the petitioners as well as the objections relating to limitation and dispose of the appeals in accordance with law within a period of 3 (three) months from the date of receipt of a copy of this order. The miscellaneous petitions, if any, pending in these writ petitions shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

ABHINAND KUMAR SHAVILI, J.

20th October, 2017.
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

<u>Writ Petition Nos.9408 and 11373 of 2017</u>
(per VRS, J.)

20th October, 2017.
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