IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.563 OF 2018.

Vanda Afonso … Petitioner.

Versus

The Union of India and 3 ors. … Respondents.

Mr. Jitendra Jain, Mr. H. D. Naik and Mr. Jas Sanghavi, Advocates for the Petitioner.
Ms. S. Linhares, Standing Counsel for the Respondents.

Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.

Date : 19 September 2018.

P.C.:

This petition had come up on board along with other Petitions and various orders were passed. On 20 August 2018, the following order was passed:-

> *"In these group of petitions, the order passed by the Assistant Commissioner of Income Tax, Panaji rejecting the application for stay have been assailed. We have heard the learned Counsel for the Petitioner and learned Standing Counsel for the Respondents.*
>
> *2. Perusal of the impugned order shows that the Assistant Commissioner of Income Tax has rejected the application preliminary on three counts. First that the application is not filed within 30 days of the receipt of the demand*

notice. Second, that the 20% of the Demand disputed in the appeal filed by the Petitioner has not been deposited, and the third that in view of the first two positions, the Petitioner is not entitled be to heard.

3. *The learned Counsel for the Petitioner points out that the question of filing the stay application within 30 days of receipt of the demand notice does not arise since case is covered under Section 220(6) of the Income Tax Act. Secondly he has pointed out that the circular dated 21 July 2017 has been interpreted by the decision of Gujarat High Court in the case of Jagdish Gandabhai Shah Vs Pr. CIT . He states that this decision was placed before the learned Assistant Commissioner, however, he has not referred to the same. The leaned Counsel for the Petitioner has also placed reliance on the decision of this Court in the case of M/s KEC International Ltd vs B. R. Balakrishnan and others which suggest that opportunity of hearing needs to be given. The learned Standing Counsel has sought to justify the order passed by the Assistant Commissioner by advancing oral arguments.*

4 *If the Respondents intend to support the order passed by the Assistant Commissioner let an affidavit in reply be filed addressing the above three points. The affidavit shall deal with the contentions raised by the Petitioner and the decision of the Gujarat High Court as referred to above.*

5. *To enable filing of this reply affidavit, stand over to 10 September 2018."*

On 10 September 2018, the following order was passed:-

> *"In all these matters, Appeals before the Commissioner (Appeals) against the order imposing penalty are pending. The learned Standing Counsel for the Department seeks time to take instructions as to the status of those Appeals and within how much time the Appeals would be disposed of.*
>
> *2. The learned Counsel for the Petitioners has placed reliance on the order passed by this Court in the case of Prateek Alloys Pvt. Ltd. vs. Asst. Commissioner of Income Tax and others wherein this Court had directed time bound disposal of the Appeal and had granted protection to the Petitioner therein.*
>
> *3. Stand over to 19 September 2018 under the caption "For Directions"."*

2. The learned Standing Counsel appearing for the Respondents states that she has taken instructions and appeal is ready for hearing on 28 September 2018 and if the Petitioner co-operates, the appeal can be disposed of within a period of six months. The learned Counsel for the Petitioner submitted that no notice of the hearing of the appeal has been yet received and the Petitioner would request one date to prepare for the hearing of the appeal on 28 September 2018.

3. Considering the facts and circumstances where the appeal is ripe for hearing and being disposed of within a time bound period, we do not deem it necessary to go into the various aspects of the matter as regards

applicability of circular and the leave to give hearing to the Petitioners. We noticed that the Division Bench of this Court in *Prateek Alloys Pvt. Ltd., Vs Asst. Commissioner of Income Tax*, [1] held in identical circumstances that when the Authority had shown their willingness to dispose of the appeal within time bound period had protected the Petitioner. The learned Counsel for the Petitioner has relied upon the decision of the Division Bench of this Court in case of the *Principal Commissioner of Income Tax(Central) Vs Dhariwal Industries Ltd,* [2] to contend that the appeal on the question of law has already been admitted as well as question of law that has been raised by the Appellant stands covered by the decision of this Court. He contends that in these circumstances when the appeal is to be disposed of in time bound period and arguable question of law arise in this petition, no coercive steps to be taken against the Petitioner till the appeal is disposed of.

4. Having considered the decision of this Court and statement made by the learned Standing Counsel, we dispose of this Writ Petition by directing that appeal pending before the Commissioner of Income Tax (Appeals) Goa, filed by the Petitioner be disposed of latest within a period of six months from today. Commissioner will give one date if the Petitioner seeks for it, if the appeal is fixed on 28 September 2018 for hearing as stated. Till the disposal of the appeal, no coercive steps be

1 Writ Petition No.325 of 2017 dated 6.4.2017.

2 ITA No.1133 of 2016 dated 4 September 2018

taken against the Petitioner. Writ Petition is disposed of in above terms.

Prithviraj K. Chavan, J. ***N.M. Jamdar, J.***