IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3157 OF 2018
IN
CIVIL APPLICATION NO. 1131 OF 2018
IN
WRIT PETITION NO. 3157 OF 2018

Shri Jagdish Madhavdas Ahuja .. Petitioner

v/s.

The Union of India & Ors. ..Respondents

Mr. Jagdish M. Ahuja petitioner in person present
Mr. Ashok Kotangle a/w Mr. Prabhakar Ranshur i/b Padma Divakar for the respondent

CORAM : M.S. SANKLECHA &
SANDEEP K. SHINDE, J.J.

DATED : 8th JUNE, 2018.

P.C.

1. At the request of the parties, the petition is being disposed of finally at the stage of admission.

2. On 12th April, 2018, we passed the following order :-

"1. On 16th March, 2017, we passed the following order :-

"1. This petition under Article 226 of the Constitution of India challenges the assessment order, notice of demand and penalty notices, all dated 8th December, 2017. All the above

impugned communications were pasted on the petitioner's residential door on 12th February, 2018. The impugned order and the notices have been issued to the petitioner on the basis of his being the legal heir of the Assessee, one Late Ms. Shobha Ahuja.

2. Prima-facie, it appears, that the impugned order and the consequent notices have proceeded on the basis that the petitioner is the legal heir of the Late Ms. Shobha Ahuja. This is denied by the petitioner. Further, the petitioner points out that, he attempted to file an appeal to the Commissioner of Income Tax (Appeals) (CIT(A)) from the impugned order dated 8th December, 2017. However, he could not do the same in the absence of any evidence of legal heirship and/or death Certificate of Ms. Shobha Ahuja. Thus, without any remedy.

3. Mr. Kotangale, Learned Counsel appearing for the respondent seeks time to take instructions and file Affidavit-in-support, if necessary. In the above view, the adjournment to 22nd March 2018, as sought for by Mr. Kotangale is granted.

4. However, the respondent is restrained till the next date from acting upon the impugned order, notices of demand and penalty all dated 8th December, 2017 till the next date.

Stand over to 22nd March, 2018."

3. The affidavit-in-reply has been filed. However, the aforesaid grievance of the petitioner as specifically indicated in paragraph nos. 17 to 20 of the petition have not been addressed by the Assessing Officer.

4. *In the above view, Mr. Kotangle, learned Counsel for the Revenue seeks time to take instructions and put on affidavit the manner and the procedure which the petitioner could follow so as to file an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)] with regard to the assessment order dated 8th December, 2017. This is more particularly so as the computer system is not accepting the appeal sought to be filed by the*

petitioner in the absence of legal heirship and / or death certificate of Mrs. Shobha Ahuja. Moreover, it is the case of the petitioner that he has not the legal heir of Mrs. Shobha Ahuja. Thus, the entire proceedings against him have no basis in law. These are matters of fact which could appropriately be challenged before the appellate authority. However, only in view of the computer system not accepting the appeal, the petitioner cannot be rendered without remedy under the Act. The limitations of the computer system cannot defeat the provisions of the Act and particularly the statutory right of appeal.

5. *In the above view, the petition is adjourned to 26th April, 2018 by which time the respondent to file an affidavit indicating the manner and the procedure to be followed by the petitioner to challenge the assessment order dated 8th December, 2017 before the appellate authority.*

6. *At the request of Mr. Kotangle, the petition is adjourned to 26th April, 2018. Ad-interim relief granted earlier to continue till the next date."*

7. Today Mr. Kotangle, on instructions from Mr. Rajesh Sawant, Income Tax Officer -23 (3)(3), Mumbai states that if an appeal is filed in physical form i.e. hard copy with the Commissioner of Income Tax (Appeals) [CIT(A)]-34, Earnest House, Nariman Point, Mumbai, the same would be accepted by the Revenue.

8. In the above view, in case the petitioner does files an appeal in the physical form with the office of the CIT(A)-34 at Earnest House, Nariman Point, Mumbai within a period of 2 weeks from today, the same would be entertained by the CIT(A) without taking up plea of

limitation.

9. The petition is disposed of in the above terms.

10. In view of disposal of Writ Petition, Civil Application No.1131 of 2018 does not survive. The Civil Application is also disposed of as infructuous.

(SANDEEP K. SHINDE J.) **(M.S. SANKLECHA, J.)**