IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 682 OF 2017

M/s. Praham India LLP, Mumbai .. Petitioner

v/s.

Income-Tax Officer-31(2)(5),
Mumbai & Ors. .. Respondents

Mr. Madhur Agarwal a/w Mr. Rajesh Poojary i/b Mint & Confreres for the petitioner
Mr. Arvind Pinto for the respondents

CORAM : M.S. SANKLECHA &
RIYAZ I. CHAGLA J.J.

DATED : 5th JANUARY, 2018.

P.C.

1. This petition under Article 226 of the Constitution of India challenges the communication dated 21st December 2016 passed by the respondent no.1 - Assessing Officer under the Income Tax Act, 1961 (Act). The impugned communication is a reference to the respondent no.3 – District Valuation Officer seeking valuation of land belonging to one M/s. Enpro Ltd. under Section 50C of the Act. The impugned reference dated 21st December, 2016 was made during the assessment proceedings for Assessment Year 2014-15 while considering the petitioner's claim for loss on account of sale of equity shares of M/s. Enpro Ltd. to one Mr. Sandip Patel.

2. The grievance of the petitioner is that the impugned reference dated 21st December, 2016 for valuation under Section 50C of the Act is without jurisdiction as the subject of sale is equity shares and not any land and / or building. This as Section 50C of the Act only applies to / is restricted to determining the value of land or building or both and cannot be extended to valuation of sale of shares of an limited company. Therefore, the petitioner seeks quashing of impugned reference dated 21st December, 2016 to the District Valuation Officer.

3. However, we find that after the impugned reference was made, the respondent no.1 - Assessing Officer has on 29th December, 2016 passed an assessment order for the Assessment Year 2014-15 under Section 143(3) of the Act. In the above order dated 29th December, 2016 the claim of loss on sale of the shares made by the petitioner was accepted, with a qualification that the same is subject to receiving of the valuation report from respondent no.2 – District Valuation Officer.

4. The petitioner being aggrieved by the Assessment Order dated 29th December, 2016 for Assessment Year 2014-15 has filed an appeal on 31st January, 2017 to Commissioner of Income Tax (Appeals) [CIT(A)]. However, in that appeal, the petitioner did not urge his

grievance with regard to the impugned reference dated 21st December, 2016 even though the assessment order was subject to the valuation report to be received on the reference made. This on a bonafide belief that the assessment order dated 29th December, 2016 having accepted the loss claimed by it, an appeal may not lie. This petition has been admittedly filed after the filing of the appeal on 31st January, 2017 with the CIT(A).

5. The issue of jurisdiction to make the impugned reference dated 21st December, 2016 has in fact merged into the assessment order dated 29th December, 2016 passed for Assessment Year 2014-15. The assessment order dated 29th December, 2016 itself makes the assessment subject to receipt of the report from the District Valuation Officer consequent to the impugned reference dated 21st December 2016. Thus, the present grievance of the petitioner ought to have been urged in its appeal filed from the assessment order dated 29th December, 2016 to the CIT(A). In the above view, as the petitioner has availed of a remedy of an appeal under the Act in respect of the assessment order dated 29th December, 2016, we are not entertaining this petition.

6. However, in this case the petitioner had bonafide not urged this

issue of the impugned reference dated 21st December, 2016 in its appeal to the CIT(A) from the assessment order dated 29th December, 2016. Therefore, the interest of justice would be served if the petitioner is permitted to file additional ground of appeal before the CIT(A) with regard to the aforesaid issue of the reference dated 21st December, 2016 being without jurisdiction. This liberty to file the additional ground is granted if the same is filed within a period of two weeks from today before the CIT(A) who is in seizin of the petitioner's appeal from assessment order dated 29th December, 2016 for Assessment Year 2014-15.

7. As the appeal has been filed as far back as on 31st January, 2017, the CIT(A)-42 is directed to decide the appeal including the additional ground with regard to the impugned reference dated 21st December, 2016 (if filed within a period of two weeks from today) as expeditiously as possible, preferably within a period of 10 weeks from today.

8. The petition is disposed of in the above terms. No order as to costs.

(RIYAZ I. CHAGLA, J.) **(M.S. SANKLECHA, J.)**