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

WRIT PETITION NO. 3131 OF 2017

CMI FPE Ltd. .. Petitioners

v/s.

The Union of India & Ors. .. Respondents

Mr. Prakash Shah a/w Mr. Viraaj Y. Bhate i/b PDS Legal for the petitioners
Mr. A.R. Malhotra a/w Ms. Padma Divakar for the respondents

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

DATED : 23rd FEBRUARY, 2018.

P.C.

1. This petition under Article 226 of the Constitution of India was originally filed challenging Notice dated 29th March, 2017 issued by the Assessing Officer under Section 148 of the Income Tax Act, 1961 (the Act) seeking to reopen assessment for Assessment Year 2010-11. Pending consideration of this petition, the Assessing Officer has passed an order dated 29th December, 2017 under Section 143(3) r/w Section 147 of the Act relating to Assessment Year 2010-11. This led to amending the petition to also challenging the Assessment Order dated 29th December, 2017 passed under Section 143(3) r/w Section 147 of the Act.

2. The grievance of the petitioner is that the impugned order dated 29th December, 2017 has been passed in breach of principles of natural justice in as much as it is the contention of the petitioners that no hearing was given either by the respondent no.4 - Additional Commissioner of Income Tax, who passed directions under Section 144A of the Act nor did the respondent no.3 - Assessing Officer before passing their directions / orders dated 26th December, 2017 and 29th December, 2017 respectively. It is contended that in view of the decision of the Apex Court in ***Whirlpool Corporation Vs. Registrar of Trade Marks & Ors., (1998) 8 SCC 01***, this Court should exercise its extraordinary writ jurisdiction and entertain the petition.

3. It may be pointed out that Mr. Malhotra, learned Counsel appearing for the respondents has contested the issue of breach of natural justice. This would indicate that this issue requires factual determination, which can be best done by the Authorities under the Act.

4. There can be no dispute with regard to our jurisdiction to entertain the writ petition from the order which has been passed in

breach of principles of natural justice and / or without jurisdiction. However, one of the considerations while entertaining a petition would be whether the petitioners have an efficacious alternative remedy to challenge the orders impugned in the writ petition also under the Act. We are of the view that the Commissioner of Income Tax (Appeals) [CIT(A)], the authority to whom the appeal would lie from the impugned order dated 29th December, 2017, would be able to provide the relief to the petitioners which they seek before us if they are right in their contention. Besides the issue gives rise to factual investigation. However, we must make it clear that we have not examined the merits of the respective contentions. It would be open to the parties to urge their contentions before the CIT(A) who would decide the same in accordance with law.

5. In the above view, we are not entertaining this petition. However, bearing in mind the fact that the petition is pending before the impugned order dated 29th December, 2017 was passed, the time to file an appeal from the impugned order dated 29th December, 2017 is extended upto 12th March, 2018. In case, the petitioners file an appeal on or before 12th March, 2018 the same would be considered on its own merits by the CIT(A) without taking any objection on account of

limitation.

6. Needless to state that the respondents will not initiate any recovery proceedings till such time as the petitioners file their appeal on or before 12th March, 2012 and for a period of two weeks thereafter. This to enable the petitioners to make appropriate application for stay of order / demand before the authorities under the Act.

7. Petition disposed of in terms of above directions.

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