IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2018

CORAM

THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.5587 of 2018 &
W.M.P.No.6917 of 2018

M/s.The G.R.D. Trust
Kalaikadhir Buildings
963 - Avinashi Road
Coimbatore-641 037
Rep. by its Managing Trustee
Dr.D.Padmanaban ...Petitioner

v.

1 Deputy Commissioner of Income Tax (Exemptions) 67A)
Race Course Road
Coimbatore-641 018.

2 Assessing Officer
Corp Ward 2 Cbe
67A, Race Course Road
Coimbatore-641 018. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the 2nd respondent on its file in C.No.CHE61W11/619/AAATT1480B and quash the impugned notice dated 31.01.2018

For Petitioner : Mr.R.Krishnamoorthy, Sr. Counsel
for Mr.I.Abbar Md Abdullah

For Respondent : Mr.A.N.R.Jayapratap
Standing Counsel

ORDER

Heard Mr.R.Krishnamoorthy, learned Senior Counsel for Mr.I.Abbar Md Abdullah, learned counsel appearing for the petitioner and Mr.A.N.R.Jayapratap, learned Standing Counsel for the respondents.

2. The petitioner seeks for issuance of Writ of Certiorari to quash the order passed by the 2nd respondent-Assessing Officer dated 31.01.2018 by which, the 2nd respondent has

directed the petitioner to pay the tax demanded for the assessment years 2012-13 and 2015-16.

3. The reason for approaching this court is on the ground that the petitioner has filed appeal before the Commissioner of Income Tax (Appeals), Coimbatore in respect of the assessment year 2012-13, which has been taken on file as ITA No.138/15 and a stay petition is pending in the said appeal. So far as the assessment year 2015-16 is concerned, the petitioner filed an appeal before the Commissioner of Income Tax(Appeals)-19, Chennai on 15.02.2017 and the appeal is yet to be taken on file.

4. On notice being issued by this court, learned counsel for the respondent/department reported that the appeal stated to have been filed before the Commissioner of Income Tax(Appeals)-19, Chennai is not traceable and no such appeal has been preferred.

5. The petitioner was directed by this court by order dated 13.03.2018 to file an affidavit as well as typed set of papers enclosing copies of the appeal petition. This was filed on 23.03.2018 and the court directed the learned Standing Counsel for the respondents to get instructions from the department.

6. Today, when the matter is taken up for hearing, the learned Standing Counsel for the respondents reports that the appeal for the assessment year 2015-16 was not filed before the Commissioner of Income Tax(Appeals)-19, Chennai on 15.02.2017, but, before the Ayakar Savakendra (ASK) , which has been assigned as ASK No.011150217021010 and therefore, it is not an appeal in the strict sense and the department had forwarded the papers to the departmental representative as there was one set of papers filed. Subsequently, it appears, necessary instructions have been given to the officials and the entire set of papers, which were filed before the ASK, has now been forwarded to the Commissioner of Income Tax(Appeals), Coimbatore.

7. A fresh problem has now arisen, i.e., if the appeal petition filed by the petitioner is to be taken on file by the Commissioner of Income Tax(Appeals), Coimbatore. would be barred by limitation. In fact, when the petitioner has filed the stay petition before the Commissioner of Income Tax (Appeals) on 14.03.2018, the same has been returned, since no appeal is pending in respect of the assessment year 2015-16.

8. In the light of the factual situation, this court is of the view that the petitioner's right conferred under the provisions of the Act to file an appeal should not be foreclosed on technicalities. To avoid all technical objections being

raised and to secure the interest of revenue, this court is inclined to issue the appropriate directions.

9. In the result, the writ petition is disposed of by directing the petitioner to file a proper appeal petition before the Commissioner of Income Tax(Appeals) in respect of the assessment for the year 2015-16, within a period of ten days from the date of receipt of a copy of this order. The petitioner is also entitled to file a stay petition in the said appeal. On receipt of the appeal petition, the Commissioner of Income Tax(Appeals), Coimbatore is directed to entertain the appeal without rejecting the same on the ground of limitation and hear the appeal along with the appeal petition in ITA No.138/15 challenging the assessment order for the year 2012-13. The Commissioner of Income Tax(Appeals) shall take up the stay petition filed by the petitioner for the assessment year 2012-13 and to be filed for the assessment year 2015-16 and hear them together and pass orders, on merits and in accordance with law. Till orders are passed, in the stay petitions, the impugned order passed by the 2nd respondent dated 31.01.2018 shall be kept in abeyance and abide by the orders to be passed by the Commissioner of Income Tax(Appeals) on the stay petitions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1 The Deputy Commissioner of Income (Exemptions) 67A
Race Course Road
Coimbatore-641 018.

2 The Assessing Officer
Corp Ward 2 Cbe
67A, Race Course Road
Coimbatore-641 018.

+1cc to Mr.I.Abrar md Abdullah, Advocate, S.R.No.26205
+1cc to Mr.A.D.Srinivas, Advocate, S.R.No.26847

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RRK(12/04/2018)