IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

HONOURABLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

HONOURABLE SRI JUSTICE P. KESHAVA RAO

Writ Petition No.46281 of 2018

Between:

Smt. N. Sampurnamma, W/o N. Sambasiva Rao,
D.No.24-21-4, Durgapuram, Ashramam Veedhi,
Vijayawada

… Petitioner

And

The Income Tax Officer, Ward-3 (1), Vijayawa
and 2 others

… Respondents

! Counsel for the Petitioner : Mr. M.V. Rama Rao

^ Counsel for Respondents : Mr. J.V. Prasad, standing counsel

HONOURABLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

HONOURABLE SRI JUSTICE P. KESHAVA RAO

Writ Petition No.46281 of 2018

ORDER: *(per V. Ramasubramanian,J)*

Challenging an order of assessment under Section 144 read with Section 148 of the Income Tax Act, 1961, an assessee has come up with the above writ petition.

2. Heard Mr. M.V. Rama Rao, learned counsel for the petitioner. Mr. J.V. Prasad, learned standing counsel takes notice for the respondent-Department.

3. The petitioner has an effective alternative remedy of appeal to the Commissioner of Income Tax (Appeals) as against the impugned order. But, the assesee seeks to by-pass the same on the ground that the very notice under Section 148 of the Income Tax Act was clearly beyond the period of limitation and that when the order is so obviously beyond the period of limitation, the question of driving the petitioner to avail the alternative remedy of appeal does not arise.

4. We have carefully considered the above submissions.

5. It is stated in the impugned order that the notice was dispatched on 30-03-2018 by registered post and that the same went in circles due to the door of the house of the petitioner being locked. Eventually, the notice is stated to have been served on 11-05-2018 by hand.

6. Therefore, limitation in this case has become a mixed question of law and fact and not merely a pure question of law. Whenever limitation is set up as a defence and whenever it is found that it hinges not only upon the question of law, but also upon a question of fact, the petitioner cannot avoid recourse to the alternative remedy of appeal.

7. Therefore, leaving it open to the petitioner to approach the Appellate Authority, the writ petition is dismissed.

The Registry shall return the original copy of the impugned order to the petitioner.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

Date: 20-12-2018

Note: Issue C.C. today

B.O./Ksn