IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 4.4.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

Tax Case Appeal No.1571 of 2005
and
M.P.No.1 of 2012

K.Y.Gaitonde ... Appellant

Vs.

The Assistant Commissioner of
Income Tax
City Circle VII(1)
Chennai. ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai, dated 16.9.2005 made in ITA No.238/Mds/1994.

For Appellant : No appearance.
For Respondent : Mr.Karthik Ranganathan
Senior Standing Counsel

JUDGMENT
(Delivered by DR.VINEET KOTHARI,J)

Record of the case has been reconstructed.

2. On the last date of hearing viz., on 25.3.2019, in order to make efforts for serving the Appellant/Assessee, we passed the following orders:-

"Learned counsel for the Revenue has produced the copy of the paper book which is taken on record.

A perusal of which shows that the Assessee K.Y.Gaitande, who is the appellant in the present Appeal, is reported to have expired vide, order sheet entry dated 25.01.2012 on the back of the papers. The legal heirs were to be brought on record. Since this was a old matter, a Court notice was sent to the Assessee at the address given but nobody has responded.

***2.** Therefore/ the respondent /Income Tax Department may serve a fresh notice on the Assessee's legal representatives living at the address given in tlle memo of appeal namely Family Members of Shri. K:Y.Gaitande, Corion House, 72, Harrington Road. Chetpet, Chennai - 600 031. Such notice may be served directly through a messenger within a period of one week from today and the legal heirs of the Assessee may make arrangements for appearance in the present appeal on the next date of hearing.*

3. Put up the matter on ***04.04.2019*****."**

3. Today, the learned Senior Standing Counsel Mr.Karthik Ranganathan appearing for the Revenue submitted that the Department's

Officials visited the said place at the address quoted above in the order dated 25.2.2019 and it came to their knowledge that the Assessee Mr.K.Y.Gaitonde has expired and his legal representatives have left the Country to USA and there was nobody available in the said address to be served with the notice of the present Appeal. He further submitted that in such cases, where the Appellant/Assessee has expired, invoking Order 22 Rule 3 of the Code of Civil Procedure, the legal representatives could not be brought on record, the Appeal has to be dismissed as abated.

4. We find some force in the submission made by the learned Counsel for the Revenue. Since the Appellant died and his legal representatives are not available to argue the present Appeal or to engage a Counsel to appear in the matter, we dismiss the present Appeal as having abated with a liberty to the legal representatives to revive the said Appeal with proper Application in case, they consider it appropriate. The connected miscellaneous petition is also dismissed. Copy of this judgment be sent to the address of the Assessee as well as to the address of the learned counsel, who represented the Assessee. earlier viz., Mr.K.Ram Gopal, who is also said to have unfortunately expired.

(V.K.,J.) (C.V.K.,J.)
4.4.2019

Index: Yes/No
Internet: Yes/No
ssk.

DR.VINEET KOTHARI, J.
and
C.V.KARTHIKEYAN, J.

ssk.

To

1. The Assistant Commissioner of
Income Tax
City Circle VII(l) Chennai.

2. Income Tax Appellate Tribunai,
Madras 'A' Bench, Chennai.

TCA No.1571 of 2005

4.4.2019.