IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3470 OF 2021

Life Insurance Corporation	**}**	
of India and Ors.	**}**	**Petitioners**
versus		
The State of Maharashtra	**}**	
and Ors.	**}**	**Respondents**

Mr.Rafique Dada, Senior Advocate with Ms.Nikita Badheka, Mr.Parth Badheka and Ms.Lata Nagal for the petitioners.

Ms.Nisha Mehra, AGP for the respondents.

CORAM :- DIPANKAR DATTA, CJ &
G. S. KULKARNI, J.

DATE :- JULY 29, 2021

PC :-

1. An order dated 22nd February 2021 passed by the Profession Tax Officer, Pune [being Exhibit 'N' at page 148 of the petition] together with similar other orders, are under challenge in this writ petition dated 22nd April 2021.

2. Although the Profession Tax Officer has described the impugned order as aforesaid as one passed under sub-section (2) of section 4B of the Profession Tax Act, 1975, the contents of such order would reveal that, in effect, it is an order under sections 9 and 10 of the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975 (hereafter "the Act of 1975" for short).

3. The grievance of the petitioners is that the order holds the first petitioner liable for not deducting profession tax out of commission paid to agents of the petitioners, who are not commission agents presently, viz. those who have either been terminated from service or who have left the employment of the petitioners.

4. We find from section 13 of the Act of 1975 that a remedy of appeal is available to the petitioners against the impugned orders. Such remedy has not been availed of; instead, the writ jurisdiction of this Court has been invoked to have the impugned orders annulled on the ground that the petitioners have been foisted with a liability contrary to law.

5. We have heard Mr.Dada, learned senior advocate assisted by Ms.Badheka, learned advocate for the petitioners and Ms.Mehra, learned AGP for the respondents.

6. None of the exceptions based whereon a writ court may entertain a writ petition despite availability of an efficacious alternative remedy, as carved out in **Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Ors.**, reported in (1998) 8 SCC 1, appears to us to be present on facts and in the circumstances. It has not been contended that the Profession Tax Officer did not have the jurisdiction under the Act of 1975 to proceed against the petitioners. If the argument of Mr.Dada is accepted, at best, the order could amount to an erroneous order passed within the exercise of jurisdiction conferred on the Profession Tax Officer. Such an order cannot be labelled as one without jurisdiction, which is one of the exceptions laid down by **Whirlpool Corporation** (supra).

7. In this view of the matter, we are not inclined to entertain this writ petition. The petitioners shall be at liberty to approach the appellate authority in accordance with the provisions of section 13 of the Act of 1975. Since this writ petition was pending before the Court from 22^{nd} April 2021 till this date, the petitioners shall be at liberty to make a prayer for condonation of delay in presenting the appeal and if such a prayer is made, we have no doubt that the appellate authority shall proceed to consider such prayer bearing in mind section 14 of the Limitation Act, 1963.

8. With the aforesaid observations, the writ petition stands disposed of. There shall be no order as to costs.

9. All contentions are left open.

10. Before parting, we may place on record the submission of Ms.Mehra that since several orders have been passed against the petitioners, honest endeavor would be made to have all the appeals, if preferred by the petitioners, heard by a single appellate authority and also to dispose of such appeals as early as possible.

SALUNKE J V Digitally signed by SALUNKE J V Date: 2021.07.30 11:15:54 +0530

(G. S. KULKARNI, J.) **(CHIEF JUSTICE)**