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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.2327 of 2022
and
W.M.P.No.2490 of 2022

M/s.Kripa Educational Institutions Pvt Ltd.,
Represented by its Director
Mr.S.Padmanabhan having registered office at
MARG AXIS, 4/318, Old Mahabalipuram Road
Kottivakkam, Chennai - 600 041.

...Petitioner

-Vs-

1. The Adjudicating Authority
Under The Prohibition of Benami Property
Transactions Act, 1988, Room No.26,
4th Floor, Jeevan Deep Building,
Parliament Street, New Delhi.
2. Deputy Commissioner of Income Tax
(Benami Prohibition), Room No.104,
1st Floor, Income Tax Investigation Wing
Building, 108, M.G.Road, Nungambakkam
Chennai 600 034.

...Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records on the file of the 1st respondent in Ref.No.R-1013/2018 and quash the impugned order dated 27.08.2019 passed under Section 24(5) of the Prohibition of Benami Property Transactions Act, 1988 as illegal, arbitrary and without jurisdiction.

For Petitioner : Mr.R.Sivaraman

For Respondents : Ms.M.Sheela,
Sr.Standing Counsel



O R D E R

The prayer sought for herein is to call for the records on the file of the 1st respondent in Ref.No.R-1013/2018 and quash the impugned order dated 27.08.2019 passed under Section 24(5) of the Prohibition of Benami Property Transactions Act, 1988 as illegal, arbitrary and without jurisdiction.

2.Though such a prayer has been sought for in the writ petition, Mr.R.Sivaraman, learned counsel for the petitioner has fairly submitted that, when similar issue came up before a learned Single Judge of this Court in a batch of writ petitions in W.P.Nos.35256 of 2019 etc., all those writ petitions were allowed by an order dated 09.04.2021. However, when appeals were filed by the Adjudicating Authority against the said common order of the Writ Court dated 09.04.2021, all those writ appeals were allowed by a Division Bench of this Court by order dated 04.02.2022 under which the order of the learned Single Judge has been reversed. By thus, all those writ petitions were dismissed.

3.Learned counsel for the petitioner also filed a copy of the order passed by the learned Single Judge dated 09.04.2021 in W.P.Nos.35256 of 2029 etc., batch in the matter of "M/s.Advance Infradevelopers Pvt Ltd., -Vs- The Adjudicating Authority and another" and also the Division Bench judgment dated 04.02.2022 in W.A.Nos.1682 of 2021 etc., batch in the matter of "The Adjudicating Authority and another -Vs- M/s.Anuttam Academic Institutions".

4.In the said Division Bench judgment referred to above dated 04.02.2022, the relevant portions are extracted hereunder.

"C. FINDINGS

31.In view of the above analysis of the facts, in the light of the legal principles as stated in the preceding paragraphs, this Court is of the opinion that the Learned Judge was not correct in entertaining the writ petitions, when there being an efficacious appeal remedy under Section 46 of the Act, where all the contentions, including whether the order has been passed by the Adjudicating Authority in accordance with Section 26 (7) of the Act, could have been raised and decided. As already discussed and delved in detail above, the words ?date of the order? appearing in Section 46 can only be interpreted and read to mean ?date of receipt of the order? for the purpose of computing the limitation for filing the appeal under Section 46 of the Act.



32. However, the Learned Judge without going into the question of maintainability of the writ petitions, travelled into the case on the ground of limitation raised by the respondents / writ petitioners, as prescribed under Section 26(7) of the Act and rendered a finding on the same. Therefore, this Court has to necessarily test the said order under appeal in the light of the provisions of the Act and the applicable legal principles. Accordingly, on such application, this Court has reached the firm conclusion that the orders passed by the first appellant do not suffer from infirmity on the ground of alleged violation of Section 26 (7) of the Act. In other words, the orders impugned in the writ petitions are well within the timeline as stated under Section 26 (7) and is immune from attack on this ground.

33. Since the other aspects on the merits of the case are not the subject matter of this batch of appeals and all these intra court appeals have arisen from the order of the Learned Judge, where the only ground taken by the respondents/ writ petitioners was on the limitation as per Section 26(7) of the Act, this Court is not rendering any finding on the merits of the orders passed by the first appellant / Adjudicating Authority under Section 26 (3) of the Act.

34. In such view of the matter, it is therefore left open to the parties to challenge the orders impugned in the writ petitions before the Appellate Authority under Section 46 of the Act, which authority shall entertain the appeal, if it is filed within 45 days from the date of receipt of this judgment, so as to exclude the time consumed in litigation, in the interest of parties, and in consonance with the general principles of the law of limitation. Except the issue decided by this Court with regard to the validity of the orders passed by the first appellant in accordance with section 26(7) of the Act, all other issues are left open to be decided by the Appellate Authority, in accordance with law.

35. At this juncture, it would also be more appropriate to observe that the appellants should forthwith adopt the practice of uploading the



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orders passed by the Adjudicating Authority as well as Appellate Authority online in a dedicated website. Such practice of uploading the orders immediately after passing of the same would obviate the situation, such as, the case on hand, and the subsequent procedural delays, after passing of the orders till the communication of the certified copies of the same to the parties, would not in any way affect the validity of the orders of the Adjudicating Authority with regard to the statutory timeline to be followed nor would there be any doubt raised or cast on the actual date of passing of the orders.

D. CONCLUSION

36.Resultantly, the order of the learned Judge is set aside and all the appeals are allowed with the aforesaid observations and directions. No costs. Consequently, connected miscellaneous petitions are closed."

5.By relying upon this decision, the learned counsel for the petitioner would contend that, since those writ petitions were dismissed by reversing the judgment of the learned Single Judge by an order of the Division Bench referred to above, this case also is liable to be dismissed. However, the learned counsel for the petitioner wants a clarification and submits that, if this writ petition is dismissed by this Court quoting the Division Bench judgment, once again a formal intra-Court appeal has to be filed before the Division Bench and in order to avoid the same clarification may be issued by this Court.

6.I have heard the learned counsel appearing for the parties and have perused the materials placed on record.

7.In view of the judgment of the Division Bench of this Court cited supra, the issue has been concluded. Therefore, this writ petition is liable to be dismissed. Accordingly, it is dismissed. However, it is clarified that, since this writ petition is dismissed in view of the Division Bench judgment referred to above, the further exercise of filing an intra-Court appeal by way of Letters Patent Appeal before this Court may not arise in this case. It is further clarified that, in Para 34 of the Division Bench judgment, 45 days time had been given to file an appeal before the appellate authority against the order impugned in those writ petitions. The same liberty is given to the present petitioner also to prefer an appeal within the said time frame of 45 days, if he is so advised.



8. With these clarifications, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

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Sd/-
Assistant Registrar(CS-VIII)

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Sub Assistant Registrar

KST

To

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W.P.No. 2327 of 2022

MT(CO)
RGA(22/03/2022)