BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **11.03.2022**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) No.4318 of 2018
and
W.M.P.(MD) Nos.4437 and 4438 of 2018

M/S.A 2295 The Madurai Cooperative
Printing Works Limited, (PAN AAAAA0623N),
No.15, T.P.K.Road,
Andalpuram, Madurai - 625 003,
represented by its Managing Director. ... Petitioner

/vs./

The Income Tax Officer,
Office of the Income Tax,
Non-Corporate Ward - 3(5),
V.P.Rathinasamy Nadar Road,
Bibikulam, Madurai - 2. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records relating to the impugned assessment order dated 08/12/2017 issued by the respondent along with demand notice for the assessment year 2015-16 and consequential rejection order dated 22/01/2018 in C.No.AAAAA0623N/ITO/NCW1(1)/MDU/2017-18 by the respondent and quash the same.

For Petitioner : Mr.A.Sivaji
For Respondent : Mr.N.Dilip Kumar
Senior Standing Counsel

ORDER

The petitioner has filed this writ petition for a Certiorari to call for the records relating to the impugned assessment order dated 08.12.2017 issued by the respondent along with demand notice for the assessment year 2015-16 and consequential rejection order of the respondent dated 22.01.2018 in C.No.AAAAA0623N/ITO/NCW1(1)/MDU/2017-18 and to quash the same.

2.The petitioner has challenged the impugned assessment order dated 08.12.2017 long after the period of limitation prescribed for filing an appeal before the appellate Commissioner had expired. As per Section 246 A of the Income Tax Act, 1961, a statutory appeal is required to be filed within a period of 30 days. However, under the proviso to Section 249 (3) of the Income Tax Act, 1961, the appellate Commissioner may admit an appeal after the expiry of the period of limitation, if he is satisfied that the appellant had sufficient cause for not presenting it within the time.

3.Being satisfied that the petitioner may have a case on merits, I am inclined to dismiss this writ petition, by giving liberty to the petitioner to approach the appellate Commissioner and thereafter before the Tribunal and before the High Court by way of an appeal. The issue would require proper adjudication in the hierarchy of the adjudication mechanism under the Act and there is a possibility of different view being taken by the Courts in the course of Appellate proceedings. Therefore, without expressing any opinion on the merits of the case, the writ petition is dismissed with the following directions:-

i) The petitioner is at liberty to workout the alternate remedy before the Appellate Commissioner, provided such an appeal is filed by the petitioner within a period of 30 days from the date of receipt of a copy of this order. If such an appeal is filed within such time, the Appellate Commissioner shall number the appeal and dispose of the same on merits and in accordance with law.

ii) The petitioner is also given liberty to file appropriate application under Section 220 (6) of the Income Tax Act, 1961 for staying the recovery of income tax proceedings within such time, failing which the respondent is at liberty to proceed to recover the tax due from the petitioner. If such application is filed within such time, recovery of tax due shall be kept in abeyance for a period of 60 days from the date of receipt of a copy of this order or the disposal of such application, whichever is early.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

TO

The Income Tax Officer,

Office of the Income Tax, Non-Corporate Ward - 3(5),

V.P.Rathinasamy Nadar Road, Bibikulam, Madurai - 2.

+1 CC to M/s.A.SIVAJI, Advocate (SR-12122[F] dated 15/03/2022)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-12328[F] dated 15/03/2022)

W.P.(MD)No.4318 of 2018

11.03.2022

MM

MS/29.03.2022/2B.4C