IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

DATED THIS THE 2ND DAY OF MARCH, 2018

BEFORE

THE HON'BLE MR.JUSTICE S.N.SATYANARAYANA

W.P.Nos.208270/2017
& 208294-297/2017 (T-IT)

Between:

Urban Development
Authority, Bidar
By its Commissioner – 585 401

... Petitioner

(By Sri P.S. Malipatil, Advocate)

And:

1. The Income Tax Officer
Ward-1, CMC No.8-10-269
Upstair Canara Bank
Basavashree Complex
Stadium Road, Bidar – 585 401

2. The Commissioner
Income Tax (Exemption)
6th Floor, Unity Building Annexe
P. Kalingarao Road
Bangalore – 560 027

... Respondents

(By Sri Ameet Kumar Deshpande, Advocate for R1)

These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India, praying to direct respondent

No.1 to not to act upon the notices issued vide Annexure-C to C4 all bearing F No.BUDA/ITO-W-1/2017-18 dated 06.10.2017, pending decision of the Appeal No.1763/B/2017 filed by the petitioner against the order dated 28.06.2017 at Annexure-B before the Income Tax Appellate Tribunal Bangalore.

These petitions is coming on for Orders this day, the Court made the following:-

ORDER

Petitioner herein is Urban Development Authority of Bidar. It has come up in these writ petitions seeking mandamus to respondent No.1 viz., Income Tax Officer, Ward-1, CMC of Bidar, not to act upon the notices issued vide Annexures-C to C4 which are bearing F.No.BUDA/ITO-W-1/2017-18 dated 6.10.2017, pending adjudication of their appeal bearing No.1763/B/2017 on the file of Income Tax Appellate Tribunal, Bengaluru Bench, Bengaluru, and also for other reliefs.

2. Brief facts leading to these writ petitions are as under:

The petitioner herein is an authority constituted under Notification No.181 TTP 88 dated 15.04.1988 of Karnataka Urban Development Authority Act, 1987. The petitioner has filed an application on 14.12.2016 in Form No.12AA seeking exemption under Sections 11 to 13 of the Income Tax Act. The application which is filed by the petitioner came to be rejected vide order at Annexure-A bearing No.CIT(E) BLR/12A/GLB-10/ITO(E)-3/Vol.2017-16 dated 28.06.2017 on the premise that the petitioner herein has failed to furnish the information which was called for by the respondents by letter dated 06.06.2017. The aforesaid order is subject matter of appeal before the Income Tax Appellate Tribunal, Bangalore Bench, Bangalore, in Appeal No.1763/B/2017 which is filed on 28.08.2017.

3. The grievance of the petitioner is that subsequent to filing of the appeal on 28.08.2017, notices under Section 147 of the Income Tax Act is issued on 06.10.2017. In the said notices total income assessable for the period from 2010-2011 to 2014-2015 is indicated which are produced and marked as Annexures-C to C4 to these writ petitions. The said notices are in the nature of proposed assessment which call for objections by the petitioner to the proposed assessment. The same is sought to be challenged in this proceeding on the premise that the first respondent has committed an error in issuing said notices during the pendency of appeal filed by the petitioner pursuing their right to seek exemption from payment of tax.

4. On going through the material available on record, it is seen that the application seeking exemption under Sections 11 to 13 is filed on 14.12.2016 for the reason that the petitioner is an authority constituted

under the provisions of Karnataka Urban Development Authority Act, 1987. As such, they are entitled to seek exemption from payment of tax under Sections 11 to 13 of the Income Tax Act. The said application which was dismissed by order dated 28.06.2017 is pending consideration before the appellate authority viz., Income Tax Appellate Tribunal, Bangalore Bench, Bangalore. Hence, the present petitions are filed contending that till the said appeal is decided, the respondent has no right to raise any demand for payment of tax.

5. Even assuming that the petitioner is entitled to exemption under Sections 11 to 13 of the Income Tax Act, it can only be for the period subsequent to the date of the application, if the same is allowed. In the instant case, the application is filed on 14.12.2016, therefore, the petitioner would be entitled to seek exemption for the assessment year which is 2017-18 onwards. Therefore, pending consideration of the appeal, any

proposal order is passed under Section 147 of the Income Tax Act or final order for the said assessment year, the same would be subject to lis pending before the appellate tribunal. However, in the instant case, proposal notice under Section 147 of the Income Tax Act is issued for assessment year from 2010-2011 to 2014-15. Even assuming that the appeal of the petitioner herein in appeal No.1763/B/2017 is allowed by the Income Tax Appellate Tribunal, Bangalore Bench, Bangalore, the same would enure to the benefit of the petitioner for the financial years, earlier to 2016-17 during which period petitioner filed application seeking exemption under Section 12AA of the Income Tax Act. The same would not benefit the petitioner for previous assessment years. Therefore, question of interfering with the said notices on the premise that the petitioner has challenged the order of rejection of its application filed under Section 12AA of the Income Tax Act and the same is pending consideration before the Income Tax

Appellate Tribunal cannot be a basis to quash the said notices.

Accordingly, these writ petitions are dismissed reserving liberty to the petitioner to pursue the appeal for subsequent assessment years to assessment year 2016-17. So far as notices which are issued for the years prior to assessment year 2016-2017, the petitioner does not have any right to challenge the same in this proceeding.

In view of writ petitions being dismissed, other application, pending for consideration does not survive.

Sd/-
JUDGE

NB*
Ct: RRJ