IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 05TH DAY OF MARCH, 2019

BEFORE:

THE HON'BLE MRS. JUSTICE S.SUJATHA

WRIT PETITION No.6990/2019 (T – IT)

BETWEEN:

M/s. THE ABRAHAM MEMORIAL EDUCATIONAL TRUST
SINGENA AGRAHARA VIA HUSKUR ROAD, APMC YARD
HUSKUR PO, ELECTRONIC CITY PHASE 2
BENGALURU-560099
REP. BY ITS TRUSTEE
JESUS SUDHIR LALL
S/O SUDHIR MADHAVJI LALL
AGED ABOUT 39 YEARS. ... PETITIONER

[BY SRI CHYTHANYA.K.K., ADV.]

AND:

1. THE TAX RECOVERY OFFICER [EXEMPTIONS]
6TH FLOOR, UNITY BUILDING ANNEXE
MISSION ROAD, BENGALURU-560027.

2. THE DEPUTY COMMISSIONER OF
INCOME TAX [EXEMPTIONS], CIRCLE-1
6TH FLOOR, UNITY BUILDING ANNEXE
P.KALINGA RAO ROAD [MISSION ROAD]
BENGALURU-560027.

3. THE COMMISSIONER OF INCOME TAX
[EXEMPTIONS], 6TH FLOOR
UNITY BUILDING ANNEXE, MISSION ROAD
BENGALURU-560027. ...RESPONDENTS

[BY SRI JEEVAN J. NEERALAGI, ADV.]

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH AS

FAR AS THE PETITIONER IS CONCERNED BY AN APPROPRIATE WRIT OR ORDER IN THE NATURE OF CERTIORARI OR OTHERWISE THE IMPUGNED RECOVERY NOTICE ISSUED IN FORM No.I.T.C.P.1, DATED 20.11.2018 BY THE R-1, ENCLOSED IN ANNEXURE-A; AND ETC.,

THIS PETITION COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Heard the learned counsel for the parties.

2. The petitioner has challenged the recovery notice dated 20.11.2018 issued by the respondent No.1 *inter alia* seeking a direction to the respondent No.2 not to take any coercive steps towards recovery of the disputed tax, as specified in demand notice dated 22.03.2016 and a direction to the respondent Nos.2 and 3 to dispose of the stay petitions dated 09.05.2016 filed before the respondent No.2 and refund the pre-deposit adjusted in excess of 15% of the demand of Rs.30,58,917/-.

3. The petitioner is a charitable trust registered under Section 12A of the Income Tax Act, 1961 ['Act' for

short]. It is the contention of the petitioner that the return of income for the assessment year 2013-14 has been filed, declaring Nil total income after claiming exemption under Section 11 of the Act. The second respondent selected the case of the petitioner for scrutiny and issued notice under Section 143[2] of the Act and thereafter notice was issued under Section 142[2A] of the Act. Reply was filed by the petitioner to the said notice. The Assessment order was passed under Section 144 of the Act by the second respondent making certain additions and issued a demand notice under Section 156 of the Act. Being aggrieved by the said Assessment Order, the petitioner has filed an appeal before the Commissioner of Income Tax [Appeals], Bengaluru and moved an application under Section 220[6] of the Act before the respondent No.2 to keep the recovery of demand in abeyance till the disposal of the Appeal and not to treat the petitioner as 'assessee in default'.

4. It appears that the respondent No.2 had issued a communication intimating the petitioner, the refund of Rs.76,56,400/- for the assessment year 2015-16 has been adjusted towards the demand for the impugned assessment year, to which the petitioner replied requesting the said respondent to refund the amount in excess of 15% of the demand adjusted and also prayed to stay the remaining demand of 85% till the disposal of the appeal. However, the respondent No.1 issued a recovery notice under Rule 2 of the Second Schedule to the Act for the assessment year 2013-14. Being aggrieved by the same, the petitioner is before this Court.

5. Learned counsel Sri.Chythanya.K.K., appearing for the petitioner would submit that the action of the respondent No.1 in issuing recovery notice is contrary to the CBDT instructions issued from time to time and more particularly Instruction No.1914 dated

02.12.1993 read with Office Memorandum [F.No.404/72/93-ITCC] dated 29.02.2016 in respect of recovery of outstanding tax demands. It is submitted that the petitioner cannot be treated as an 'assessee in default' for the purpose of recovery of demand as the stay applications are pending before the respondent No.2. Thus, seeks for interference by this Court.

6. Learned counsel Sri.Jeevan J. Neeralagi, appearing for the Revenue though fairly submits that during the pendency of the stay applications before the respondent No.2, issuance of recovery of notice is contrary to the Instructions No.1914, but made an endeavour to justify the action of the respondents.

7. Having heard the learned counsel for the parties and perusing the material on record, it is apparent that the respondent No.1 has proceeded to issue the recovery notice during the pendency of the stay applications pending before the respondent No.2,

when an appeal is preferred before the Commissioner of Income Tax [Appeals] against the Assessment order for the year 2013-14.

8. Instruction No.1914 dated 02.12.1993 of the Board would make it clear that the stay petition filed with the Assessing Officer must be disposed of within two weeks of the filig of petition by the taxpayer.. The assessee must be intimated of the decision without delay. In terms of Clause 4 of the Office Memorandum [F.NO.404/72/93-ITCC] dated 29.02.2016, in order to streamline the process of grant of stay and standardize the quantum of lump sum payment required to be made by the assessee as a pre-condition for stay of demand disputed before CIT [A], the following modified guidelines are being issued in partial modification of Instruction No.1914: [Office Memorandum dated 31.07.2017] where the outstanding demand is disputed before the CIT[A], the assessing officer shall grant stay

of demand till disposal of first appeal on payment of 20% of the disputed demand, unless the case falls in the category discussed in para [B][a] hereunder:

> *"[a] the assessing officer is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount higher than 15% [20% as per Office Memorandum dated 31.07.2017] is warranted [e.g., in a case where addition on the same issue has been confirmed by appellate authorities in earlier years or the decision of the Supreme Court or jurisdictional High Court is in favour of Revenue or addition is based on credible evidence collected in a search or survey operation, etc.,]"*

9. The action of respondent No.1 in initiating the recovery notice is obviously contrary to the aforesaid Instructions and the Office Memorandum issued by the Board. Hence, the same cannot be held to be justifiable which necessarily calls for interference by this Court.

10. In the circumstance as aforesaid, this Court deems it appropriate to quash the recovery notice at Annexure-A and to direct the respondent No.2 to dispose of the stay application filed by the petitioner on

09.05.2016 and 04.02.2017 vide Annexures-B and E respectively to the writ petition. Hence, the following:

ORDER

1. The recovery notice dated 20.11.2018 issued by the respondent No.1 at Annexure-A to the writ petition is quashed. The proceedings are restored to the file of the respondent No.2.

2. The respondent No.2 shall re-consider the stay applications filed by the petitioner on 09.05.2016 at Annexure-B and on 04.02.2017 at Annexure-E, after providing an opportunity of hearing to the petitioner and pass appropriate orders in accordance with law in an expedite manner.

3. All rights and contentions of the parties are left open.

4. Writ petition stands allowed to the extent indicated above.

Sd/-
JUDGE

NC.