



2023:KER:67636

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

FRIDAY, THE 3RD DAY OF NOVEMBER 2023 / 12TH KARTHIKA, 1945

WA NO. 1916 OF 2023

AGAINST THE JUDGMENT DATED 17.10.2023 IN WP(C) 33187/2023 OF
HIGH COURT OF KERALA

APPELLANT/PETITIONER:

KUNNAPPILLY BUILDERS LL.P
40/1803, N2, FLAT NO.7C,
SAMUDRA DARSHAN APARTMENT,
MARINE DRIVE, KOCHI, KERALA
REPRESENTED BY ITS PARTNER
MS. SREEDEVI GOPALAKRISHNAN,
PIN - 682011

BY ADVS.
SRI.ANIL D. NAIR
SMT.TELMA RAJU
SRI.AADITYA NAIR

RESPONDENTS/RESPONDENTS:

- 1 ADDITIONAL/JOINT/DEPUTY/ASSISTANT COMMISSIONER OF
INCOME TAX/ INCOME TAX OFFICER
NATIONAL FACELESS ASSESSMENT CENTRE,
DELHI, PIN - 110001
- 2 COMMISSIONER OF INCOME TAX (APPEALS),
NATIONAL FACELESS ASSESSMENT CENTRE (NFAC),
NEW DELHI, PIN - 110001
- 3 THE INCOME TAX OFFICER
CORPORATE WARD 1 (1), KOCHI,
PIN - 682018



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BY SRI JOSE JOSEPH, SC

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
03.11.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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WA. No.1916 of 2023

JUDGMENT

Dr. A.K.Jayasankaran Nambiar, J.

Against Ext.P1 assessment order for the assessment years 2015-2016 under the Income Tax Act, the appellant had preferred Ext.P2 appeal and Ext.P3 application for stay of recovery pending disposal of the appeal. When recovery steps were initiated by the respondents during the pendency of the statutory appeal and stay application, the appellant approached the writ court through WP(C).No.33187 of 2023, which was disposed by a learned Single Judge by judgment dated 17.10.2023 relegating the appellant to the alternate remedy of appeal and directing the Appellate Authority to dispose the stay application or the appeal within a period of two months. In the appeal before us, the appellant impugns the said judgment of the learned Single Judge solely on the ground that while disposing the Writ Petition, the learned Single Judge did not grant a stay of recovery proceedings till such time as the First Appellate Authority considered the stay application/appeal as directed by the learned Single Judge.

2. We have heard Sri.Anil D.Nair, the learned counsel for the appellant and Sri.Jose Joseph, the learned Standing counsel for the



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Income Tax Department.

3. In our view, since the learned Single Judge had relegated the appellant to the alternate remedy before the statutory authority it was incumbent upon the learned Judge to protect the appellant from recovery proceedings pending disposal of the application by the respondent appellate authority. Accordingly, we modify the impugned judgment of the learned Single Judge to the limited extent of clarifying that pending disposal of the stay application or appeal whichever is earlier, by the appellate authority, the recovery proceedings against the appellant for recovery of the amounts confirmed against him by Ext.P1 assessment order shall be kept in abeyance. Save for this limited modification, the rest of the directions in the impugned judgment are not interfered with.

Sd/-

DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-

DR. KAUSER EDAPPAGATH
JUDGE