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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 81 OF 2017
WITH
WRIT PETITION NO. 82 OF 2017

Maharashtra Industrial Development Corporation … Petitioner

vs.

Commissioner of Income Tax (Exemptions) and 3 Ors. … Respondents

…....

Mr.Sameer Dalal for the Petitioner.
Mr. Anil Singh, ASG a/w. Mr. N. C. Mohanty for Respondents.

…....

CORAM : M. S. SANKLECHA &
A. K. MENON, JJ.
DATE : 8th MARCH, 2017

P.C. :

1. These two petitions under Article 226 of the Constitution of India challenge two Orders dated 28th October, 2016 passed by the Commissioner of Income Tax (Exemptions) disposing of the petitioner's applications for stay of demand / not being treated as an assessee in default in terms of Section 220(6) of the Income Tax Act, 1961 (the Act) till the disposal of its pending appeals by the Commissioner of Income Tax (Appeals) (CIT(A)).

2. One impugned order dated 28th October, 2016 relates to demand for the Assessment years 2007-08 and 2008-09 while the other impugned order dated 28th October, 2016 relates to demand for the Assessment years, 2009-10, 2010-

11 and 2012-13. The impugned orders dated 28th October, 2016 has granted a conditional stay on petitioners depositing an amount aggregating to Rs.232.79 crores for the Assessment year 2007-08 and 2008-09 and Rs. 377.68 crores for the Assessment year 2009-10, 2010-11 and 2012-13 in 4 installments at a gap of one month each commencing from 30th November, 2016. This was 15% of the demand for each of the above Assessment years in which the appeals are pending with the CIT(A).

3. This petition was on board on 9th February, 2017 at which time the learned Senior Counsel appearing on behalf of the petitioner on instructions stated that the hearing of the appeals from the Orders of the Assessing Officer for the subject Assessment years had almost been concluded before the CIT(A) with petitioners being directed by the CIT(A) to file its written submission. However, when the petitioners sought to file written submissions on 8th February, 2017, the CIT(A) refused to accept it on the ground of the pending petitions. In the above view, both the petitions were adjourned to enable the CIT(A) to conclude the hearing of the two appeals by deciding the appeal finally. We had also directed the CIT(A) to accept the written submissions sought to be filed by the petitioners, notwithstanding the pending petitions and the petition was adjourned to 1st March, 2017. On 1st March, 2017 the petition was adjourned to 3rd March, 2017 at the request of the petitioner.

4. On 3rd March, 2017, the respondent filed an affidavit dated 2nd March, 2017 of Mr. Raj Kumar, Deputy Commissioner of Income Tax (Exemption)-2(1) pointing out that the orders / note sheets in the file of the CIT(A) indicated that the appeals of petitioner had been adjourned on 23rd November, 2016, 20th December, 2016 and 18th January, 2017 at the request of the petitioner.. Further on 31st January, 2017 the petitioner filed an additional ground of appeal which required CIT(A) to seek a remand report from the Assessing Officer on the fresh ground urged / filed. Consequently, hearing was adjourned to 20th February, 2017. Now, the hearing has been fixed on 9th March, 2017 as the remand report of the Assessing Officer is awaited. The affidavit states that there is nothing on record to indicate that the CIT(A) had refused to accept written submission on 8th February, 2017 as stated by the petitioner's Counsel on instructions. In particular the affidavit also mentions that the hearing before the CIT(A) is only at a preliminary stage and not at the concluding stage as pointed out to this Court on 9th February, 2017 by the petitioner.

5. The petitioners have filed an affidavit in rejoinder dated 7th March, 2017 of Mr. Manoj Kale its Chartered Accountant who attends to its hearing before the CIT(A). This affidavit disputes the affidavit filed on behalf of the department dated 2nd March, 2017 on the ground that it does not correctly reflect the facts which transpired before the CIT(A). In particular, the affidavit disputes the representation in the affidavit dated 2nd March, 2017 of the Revenue that the hearing of appeal is still at a preliminary stage and reiterates that it is at a

conclusive stage. For the present we are not going into the correctness or otherwise of the affidavit filed on behalf of the parties for it may not be necessary for disposal of this petition.

6. In the present facts, we see no reason to entertain the present petition. This for the reason that after the impugned orders dated 28th October, 2016 granting conditional stay of the demand for the subject Assessment years on payment of 15% of the demand in four installments commencing with effect from 30th November, 2016 was passed the petitioner approached the Commissioner of Income Tax (Exemptions) by its letter dated 30th November, 2016 making the following prayer / request in para 12 thereof :

> "*Without prejudice to the above. in case if the demand is decided to be paid, we request you, in any event, to allow the installments to begin from December 31, 2016 (rather than November, 2016)*"

7. From the above, it is evident that the petitioner had accepted the directions in the impugned orders dated 28th October, 2016 and had only sought an adjournment of one month's time to begin paying installment from 31st December, 2016 rather than 30th November, 2016. Although at one time, we were of the view that as the CIT(A) had almost concluded the hearing of the appeals (as informed by the petitioner), the deposit of 15% could be kept in abeyance. However, as the same is now denied by the Revenue making it a

disputed issue, we see no reason to exercise our writ jurisdiction. Moreover, the order sheets annexed to affidavit dated 2nd March, 2017 is evidence of the adjournments granted on various occasion at the request of the petitioner and also filing of an additional ground on 31st January, 2017 which would further delay the proceedings. We see no reason in these facts to interfere in the present petition.

8. However, it is clarified that the CIT(A) need not await for the deposit of tax as directed by the impugned orders dated 28th October, 2016 to decide the pending appeals before him for the Assessment year 2007-08., 2008-09, 2009-10, 2010-11 and 2012-13. This for the reason that it is not a condition precedent that the disputed amounts be deposited before the appeal can be heard and disposed of by the CIT(A). However, it is clarified that the pending appeals before the CIT(A) would not by itself in any manner fetter the rights of the Revenue to adopt such proceedings as are available to it in law, to recover its taxes in terms of the impugned orders dated 28th October, 2016.

9. Accordingly, both petitions are dismissed. No order as to costs.

(A.K. MENON,J.) **(M. S. SANKLECHA,J.)**