

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF NOVEMBER, 2016

PRESENT

THE HON'BLE MR. JUSTICE JAYANT PATEL

AND

THE HON'BLE MR. JUSTICE P.S. DINESH KUMAR

WRIT APPEAL Nos.4435 - 4436/2015 (T – IT)

BETWEEN:

M/s.MOOKAMBIKA ASSOCIATES
NO.14, LAKSHMI COMPLEX
3RD CROSS, JOURNALIST COLONY
BENGALURU - 560 002
REP. BY ITS PARTNER
SRI.T.V.PRABHU

... APPELLANT

(BY SRI. ARAVIND V CHAVAN, ADVOCATE)

AND:

1. ASSISTANT COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE 2 (1), C.R.BUILDINGS
QUEENS ROAD, BENGALURU -560 001
2. PRINCIPAL COMMISSIONER OF INCOME TAX -5
1ST FLOOR, C.R.BUILDINGS
QUEENS ROAD, BENGALURU -560 001
3. TAX RECOVERY OFFICER - 5
INCOME TAX DEPARTMENT

RANGE-4, 4TH FLOOR
UNITY BUILDING (ANNEX), MISSION ROAD
BENGALURU – 560 001

...RESPONDENTS

THESE WRIT APPEALS ARE FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED IN THE WRIT PETITION 29258-29259/2015 DATED 04/09/2015.

THESE APPEALS COMING ON FOR PRELIMINARY HEARING THIS DAY, **JAYANT PATEL J.**, MADE THE FOLLOWING:

ORDER

The present appeals are directed against the order dated 4th September 2015 passed by the learned Single Judge, whereby the learned single Judge for the reasons recorded in the order has dismissed the petitions.

2. We have heard Mr.M.V.Sheshachala, learned Senior Counsel appearing for Mr.Aravind A.Chavan, learned Counsel for the appellant.

3. The contention raised on behalf of the appellant was that no reasons are recorded for rejecting the application filed under Section 220(2) of the Income Tax Act. It is also

submitted that the principal ground contended was that as the Income Tax Department had attached the property in the year 2010, for a period of five years until the attachment was lifted, the appellant could not continue with the business activity and on account of the same, if the appellant is called upon to pay the interest, such would cause hardship to the appellant. It has been submitted that the learned Single judge did not consider the aforesaid aspects. Hence, this Court may consider the present appeals.

4. So far as the power of waiver is concerned, as provided under Section 220(2A) of the Act, the liability to pay interest may be waived if the hardship is satisfactorily demonstrated before the competent authority. Further hardship is an aspect which can be considered keeping in view the financial status of the person concerned. When one speaks for financial status, it would include moveable as well as immovable property of the person concerned. The second

aspect as provided under Section 220(2A) is that if the default of payment was due to circumstances beyond control of the assessee, then the power may be exercised. Third ground is that if the assessee has co-operated in the enquiry relating to assessment or any proceedings for recovery, then also discretion may be exercised for waiver of interest.

5. If the facts of the present case are considered, the learned Single Judge has recorded that though return was required to be filed by the assessee but he did not file. It is only after search proceeding, the returns were filed under Section 153-C of the Act. The assessment was made in the year 2010 but the assessee even thereafter did not pay the amount as per the demand made. Coercive steps were taken by attaching the property of assessee. In spite of coercive steps for attachment of the property being taken, after a period of about five years, the amount of tax as per the assessment order which includes interest prior to the

assessment has been paid. The fact that no return was filed well in time and fact that it is only after search proceedings, returns were filed and fact that after the assessment was made, no amount of tax was paid and the fact that the coercive steps had to be taken, all would go to show that it was not a case where the assessee had co-operated in the enquiry or the proceedings of assessment for recovery of the amount due to him.

6. The relevant material considered by the authority is that there is no proof produced to show that the payment of interest would cause genuine hardship to the assessee. The matter rests on the aspect of no proof. Even the assessee, in the application has not produced any documentary evidence to show the genuine hardship was to be caused. Even if it is considered for the sake of examination that the Income-tax Department attached the property and freezed the bank account and the attachment continued until the amount as

per the assessment order was paid, then also the exercise of statutory power for enforcement of the recovery by attachment of property or by freezing of bank account cannot be said as a valid ground to treat it as genuine hardship. Such hardship as pleaded has to be due to circumstances other than enforcement of any law. If the enforcement of law is to be treated as hardship, the very purpose of rule of law would be frustrated. Therefore, we are inclined to observe that such hardship should be on the ground other than enforcement of law.

7. The only ground contended in the application was with regard to attachment of property by way of enforcement of law by the department. No other ground which may fall under the head of genuine hardship was contended.

8. Apart from the above, the schedule of the properties which were attached as per the documents produced by the petitioners themselves at Annexure-“G” shows that there are

huge immovable properties totally 12 in number in the peripheral area of Bangalore city. Therefore, if a person is having large number of immovable properties and can pay the amount of interest by sale or realization of money from the property, it cannot be said to be a genuine hardship as sought to be canvassed. On the contrary, the quantum of amount of Rs.45,11,093/- is a tip in the iceberg in comparison to huge value of 12 properties belonging to the assessee. If the person has the capacity to pay, may be by out of his movable or immovable properties and inspite of that the ground is contended as of hardship, same cannot be termed as genuine hardship. If such hardship is treated as genuine hardship, it would defeat the purpose of consideration of the genuine hardship.

9. The learned counsel for the petitioner-appellant relied upon the decision of the Apex Court in the case of ***B.M. Malani .vs. Commissioner of Income Tax and another***

reported at (2008) 306 ITR 0196 to contend that in the said case the property was available, inspite of the same the Apex Court found that there was no proper consideration and the matter was remanded.

10. We may record that in the said decision, the facts of the case show that the appellant-assessee had volunteered that the securities be sold and the Apex Court found that why the said request of the assessee could not be acceded to was not explained. The Apex Court also found that it was a voluntary act on the part of the assessee and therefore, in the light of the same, the observations were made by the Apex Court. In the present case, there is no volition whatsoever has been shown by the appellant-assessee to offer any portion of the property out of 12 immovable properties for payment of the amount. Hence, the said decision is of no help to the appellant.

11. In the another decision of the Apex Court in the case of ***Kishan lal .vs. Union of India and another*** reported at (1998) 230 ITR 0085, the decision was taken without recording any reasons whatsoever and the said aspect is reflected in the facts of the said case and therefore, the Apex Court found that the order is without recording of the reasons and therefore, the matter was remanded to the competent authority. In the present case, it cannot be said that no reasons are recorded touching upon the ground germane to the exercise of power. One is for non-cooperation of the appellant-assessee in the recovery proceedings and another is no proof produced to show genuine hardship to the assessee. Hence, the said decision would be of no help to the appellant-assessee.

12. If the aforesaid is considered, read with the reasons recorded by the learned Single Judge, we do not find that the view taken by the learned single Judge can be said to be an

erroneous exercise of the judicial discretion which may call for interference in an intra-Court appeal. Hence, no case is made out for interference.

Therefore, the appeals are dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Yn./*alb/-