

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1471 OF 2015

Maharashtra Airport Development Co.Ltd. ... Petitioner.

Vs

1.Deputy Commissioner of Income Tax & Ors. ... Respondents

Mr.Salil Kapoor with Mr.K.Gopal & Mr.Jitendra Singh, for the
Petitioner.

Mr.Suresh Kumar, for the Respondents-Revenue.

**CORAM : M.S.SANKLECHA &
G.S. KULKARNI, JJ.**

DATE : 20th AUGUST, 2015.

PC. :

1. The challenge in this petition is to the order dated 18th February, 2015 passed by the Commissioner of Income Tax. By the impugned order dated 18th February, 2015, the Commissioner of Income Tax refused to stay the balance demand of tax amounting to Rs.19.46 crores (alongwith interest) pending the disposal of the petitioner's appeal by the Commissioner of Income Tax (Appeals)

(CIT (Appeals)) from the order dated 24th March, 2014 passed by the Assessing Officer.

2. The genesis of the present proceedings is the assessment order dated 24th March, 2014 passed by the Assessing Officer on reopening the assessment for the Assessment Year 2008-09. The petitioner had in terms of Section 220(6) of the Act sought a stay of demand of tax consequent to the Assessment order pending the disposal of its appeal before the CIT (Appeals). The Assessing Officer by an order dated 10th October, 2014 granted a stay of the demand to the extent of 50% of the tax payable till the disposal of the petitioner's appeal before the C.I.T. (Appeals). Not satisfied, the petitioner carried the matter to the Commissioner of Income Tax who by the impugned order dated 18th February, 2015 has refused to stay the demand till the disposal of the appeal by the CIT (Appeals).

3. The issue for consideration is 'whether a grant of Rs.40 crores received from the State of Maharashtra under the State Government Resolution dated 9th August, 2007 is to be treated as revenue receipt or capital receipt. These funds were made available

to the petitioner for the purpose of acquisition of land to carry out its project for development of Airports and the Special Economic Zones within the State of Maharashtra. The State Resolution also requires the petitioner to file monthly reports in respect of the utilization of the funds received for land acquisition from the State Government.

4. The impugned order refusing to grant stay has proceeded on the following basis:-

(a) that the deposit of the amounts would cause no financial hardship to the assessee; and

(b) that out of total amount of Rs.155 crores received, land valued at Rs.40.54 crores only has been acquired. Thus, as the funds were not utilised for acquisition of the land, the same cannot be treated to be receipts on capital account.

5. So far as the rejection of the application for stay on the ground that no financial difficulty is caused by the deposit, is contrary to the decision of this Court in Writ Petition (Lodg) No.523 of 2013 *“UTI Mutual Fund Vs. ITO”*, wherein the Court in its order dated 6th March,2013 has observed that where a strong prima facie

case has been made out in its favour by the assessee, the requirement of pre-deposit would by itself be a matter of hardship. As held by this Court in the Judgment in the case “*Mumbai Metropolitan Region Development Authority Vs. The Deputy Director of Income Tax (Exemption-1(1) & Ors.*” in “*Writ Petition (Lodg) no.2348 of 2014*” dated 29th October, 2014, financial hardship is a factor which may have some bearing, if the authorities concerned are not convinced on a strong prima facie case in favour of the applicant. To illustrate a strong prima facie case would be where, the issue is covered by the decision of a superior forum or by a consistent practice to the contrary being followed by the Revenue in the case of the assessee in the earlier years. In this case Mr. Salil Kapoor, learned Counsel appearing on behalf of the petitioner points out that in the earlier years commencing from Assessment Year 2005-06 the petitioner has been receiving funds from the State Government being grants for acquisition of land. At no point of time the Revenue has sought to consider it as revenue. Besides, he filed a statement indicating that out of Rs.155 crores which have been received commencing from the financial year 2004-05 upto 2007-08, an amount of Rs.153.55 cores has been utilized for acquisition of land.

Mr.Kapoor further points out that the Commissioner of Income Tax did not at any point of time before disposal of the application, give them any chance to explain regarding the receipt and utilization of the funds. The Assessment order being appealed against does not rely upon the aforesaid fact of receipt and utilization of funds. Therefore, the petitioner had no occasion to point out these figures on its own. All the aforesaid factors would indicate that due consideration has not been received at the hands of the Commissioner of Income Tax.

6. However, be that as it may, we are informed that the CIT (Appeals) has already commenced the hearing of petitioner's appeal filed from the assessment order dated 24th March, 2014 for the Assessment Year 2008-09 with effect from 18th August,2015. The appeal has now been adjourned to 29th October,2015 as the concerned CIT (Appeals) is on leave. Mr.Kapoor states, on instructions, he is on leave for a period of two months. In view of the fact that the CIT (Appeals) is seized of the matter and hearing it, it would be appropriate that in the peculiar facts of the present case the Revenue does not adopt any coercive proceedings till such time

as the CIT (Appeals) disposes of the petitioner's appeal arising out of assessment order dated 24th March, 2014 and for the period of two weeks thereafter. However, as the hearing has already commenced, we would direct the CIT (Appeals) to dispose of the appeal as expeditiously as possible and preferably on or before 15th December, 2015.

7. It is made clear that the observations made herein are for limited purpose for considering the application for stay. These directions should not in any manner influence the CIT (Appeals) in disposing of the petitioner's appeal on merits in accordance with law.

8. The Writ Petition is disposed of in the above terms. No order as to costs.

(G.S.KULKARNI, J.)

(M.S.SANKLECHA, J.)