IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 966 OF 2018

White Pay LLP, Mumbai .. Petitioner

v/s.

The Income-tax Officer 30(3)(5),
Mumbai & Ors. .. Respondents

Mr. Jehangir Mistri, Senior Counsel a/w Mr. Madhur Agarwal i/b Atul Jasani for the petitioner
Mr. Akhileshwar Sharma for the respondents

CORAM : M.S. SANKLECHA &
SANDEEP K. SHINDE, J.J.

DATED : 2nd APRIL, 2018.

P.C.

1. This petition under Article 226 of the Constitution of India challenges the order dated 26th March, 2018 passed by the respondent no.1 Assessing Officer under Section 220(6) of the Income Tax Act, 1961 (the Act). The impugned order dated 26th March, 2018 rejected the petitioner's application for stay of the penalty imposed by his order dated 16th March, 2018 till the disposal of its appeal which is proposed to file before the Commissioner of Income Tax (Appeals) [CIT(A)]. This as the Act provides 30 days time to file an appeal and the stay application became necessary as the normal period of 30 days to pay the amounts had been curtailed to 7 days in the Notice under Section

156 of the Act.

2. Briefly, the facts leading to this petition are that on 16th March, 2018 the Assessing Officer passed an order imposing a penalty of Rs.1.88 crores under Section 270(1)(c) of the Act in respect of the Assessment Year 2015-16.

3. The impugned order dated 16th March, 2018 was served upon the petitioner on the same day along with a notice of demand under Section 156 of the Act. However, the normal period of 30 days notice to make the payment as provided under Section 220(1) of the Act was curtailed and the petitioner was directed to pay the amount within 7 days of the service of the notice. It further provided that in case of failure to make the payment, the petitioner would be considered to be an assessee in default.

4. On 21st March, 2018 the petitioner made an application for stay of the demand of Rs.1.88 crores to the Assessing Officer pending disposal of its appeal by the CIT(A). In the above application, the petitioner also sought a copy of the reasons which according to the Revenue led it to conclude that granting of normal period of 30 days

notice under Section 156 of the Act would be detrimental to the interest of the Revenue.

5. By the impugned order dated 26th March, 2018, the Assessing Officer rejected the petitioner's application without considering the the petitioner's application for stay. This on the ground that the application for stay would only be considered after the 20% of the penalty imposed by the order dated 16th March, 2018 is paid by the petitioner.

6. On 26th March, 2018 the Assessing Officer attached the petitioner's bank account with HDFC Bank Ltd. in exercise of powers under Section 226 of the Act. This led to the petitioner filing this petition challenging the impugned order dated 26th March, 2018 rejecting the petitioner's stay application. On 28th March, 2018, this petition was mentioned in the morning and kept on production board at 3.00 p.m. The petitioner had duly served the respondent revenue that the petition is to be taken up for hearing at 3.00 p.m. However, before the petition could be heard at 3.00 p.m., the Assessing Officer withdrew the amount of Rs.9.88 lakhs from the petitioner's bank account at HDFC Bank Ltd.

7. It must be clarified that Mr. Sharma, learned Counsel for the Revenue states that the petition was not received by the Assessing Officer before he withdrew the amounts from the attached bank account. However, Mr. Mistri, learned Senior Counsel appearing for the petitioner, on instructions, states that the petition was attempted to be served upon the Assessing Officer, who did not accept the same and directed the petitioner to file the petition in the receiving Section of the Department (*Tapal*). Be that as it may, for the purpose of this petition it is not necessary to decide the above controversy.

8. On 28th January, 2018, at 3.00 p.m. the respondent revenue was not represented despite notice. Thus, the petition was kept back to 5.00 p.m. and the petitioner was directed to serve a notice upon the respondent once again. Thereafter, the parties were heard at 5.00 p.m. At that time, the respondent revenue were directed to deposit the amounts withdrawn from the petitioner's bank account on the next bank working day. This was for the reason that the withdrawal of the amount from the aforesaid bank accounts without notice, is in defiance of the order of this Court in ***UTI Mutual Funds Vs. ITO and Ors. 345 ITR 71***.

9. We are informed by the parties that the aforesaid amount of Rs.9.88 lakhs which was withdrawn from the attached HDFC bank account have been deposited by the Assessing Officer in the attached bank account on 31st March, 2018.

10. Today after hearing the parties, we pointed out to the learned Counsel for the Revenue that the impugned order is contrary to and in defiance of the orders of this Court in ***KEC International Ltd. Vs. B.R. Balkrishnan, 251 ITR 158*** and *UTI Mutual Funds (supra),* which provide the manner in which the stay applications under Section 220(6) of the Act have to be disposed of. We also pointed out to the learned Counsel of the respondent revenue that although the Revenue is no doubt entitled in an appropriate case to reduce the period of notice under Section 156 of the Act in terms of proviso to Section 220(1) of the Act, yet, the reasons for such reduction of period should be communicated to the petitioner as directed by this Court in ***Firoz Tin Factory Vs. Asstt. Commissioner of Income Tax,(Bom), 359 ITR 296***.

11. In the above view, at the request and instance of the parties, the following consent order is passed :-

(i) The impugned order dated 26th March, 2018 passed by respondent no.1 rejecting the petitioner's stay application is set aside;

(ii) The Assessing Officer shall in accordance with the decision of this Court in Firoz Tin Factory (supra) provide the reasons which lead the Revenue to restrict the notice period under Section 156 of the Act to only 7 days instead of the normal 30 days period;

(iii) The Assessing Officer will pass a fresh order on the petitioner's stay application after hearing the petitioner in accordance with law and particularly in accordance with the decisions of this Court in KEC International Ltd. (supra) and UTI Mutual Funds (Supra);

(iv) Mr. Mistri, learned Senior Counsel appearing on behalf of the petitioner states that attachment of the Bank Accounts makes it impossible for it to carry on its business. Therefore, on instructions of Ms. Shweta Rau, partner of the petitioner firm states that an amount of Rs.9,88,068/- which is the amount which has been attached will be available in the bank account till such time as the petitioner's stay application is disposed of by the

Assessing Officer in accordance with law and for a period of two weeks thereafter. Statement accepted;

(v) Needless to state that in case the order of the Assessing Officer on the petitioner's stay application is adverse to the petitioner, then for a period of two weeks thereafter no coercive proceedings for recovery will be adopted by the Revenue. This is enable the petitioner to take such steps as it is advised in law; and

(vi) Thus, the petition is disposed of in the above terms. No order as to costs.

(SANDEEP K. SHINDE, J.) **(M.S. SANKLECHA, J.)**