IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1010 OF 2015

M/s.Om Associates. ...Petitioner.
Vs.
1.Income Tax Officer Ward 1(1), Pune & Ors. ...Respondents

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Mr.Mihir Naniwadekar, for the Petitioner.

Mr.Vimal Gupta, Senior Advocate with Mr.Sham Walve, for the Respondents-Revenue.

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

**DATE : 12th MARCH, 2015**
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**P.C.**:-

1. This petition under Article 226 of the Constitution of India challenges the orders dated 10.6.2014 passed by the Income Tax Officer, dated 5.1.2015 of the Additional Commissioner of Income Tax and dated 5.2.2015 of the Chief Commissioner of Income Tax, rejecting the petitioner's application for not treating the assessee as being in default in respect of the amount assessed by Assessment Order dated 27.3.2014 passed in respect of Assessment Year 2011-12. These applications before the aforesaid Authorities were made pending the disposal of the petitioner's appeal before the Commissioner of Income Tax

(Appeals). The petitioner has also challenged the certificate of recovery dated 22.12.2014 (not annexed as petitioner has not served with the copy of the same, but the reference of the same is found in the communication dated 5.1.2015 addressed by the Tax Recovery Officer to the petitioner).

2. The basic grievance of the petitioner is that they are entitled to benefit of deduction under Section 80IB(10) of the Income Tax Act,1961 (the Act) in respect of the building constructed by them on the basis of occupation certificate issued by Pune Municipal Corporation. It is on the aforesaid ground it is the petitioner's contention that the assessment order itself is not sustainable.

3. The petitioner has already filed an appeal before the Commissioner of Income Tax (Appeals). Therefore, without examining the merits of the impugned orders, we grant liberty to the petitioner to file an application for stay of the assessment order dated 27.3.2014 before the Commissioner of Income Tax (Appeals). In that stay application the petitioner could also, if it so desires, challenge the recovery notice as being consequential to the order dated 27.3.2014. If the petitioner files an application for stay before the Commissioner of Income Tax (Appeals) within one week from today, the same would be considered on its own merits.

4. It is made clear that there would be stay of any further recovery till

the Commissioner of Income Tax (Appeals) disposes of the stay application and one week thereafter. However, the recovery certificate and the attachment order passed by the Revenue is not being disturbed at this stage. It is also made clear that Mr.Naniwadekar, learned Counsel for the petitioner, as per the instructions from the partner of the petitioner, states that the petitioners would in terms of its undertaking given to the Principal Commissioner of Income Tax, would deposit the amount of Rs.50 lakhs received on the sale of flat C-101 within 10 days from today.

5. Writ Petition is disposed of in the above terms.

**(G. S. KULKARNI, J.)** **(M.S.SANKLECHA, J.)**