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

WRIT PETITION NO.8469 OF 2015

M/s. V. M. Constructions .. Petitioner.
V/s.
Income Tax Officer, Ward 22(3)(1)
& Another .. Respondents.

Ms. Ritika Agarwal i/b. Khusiram Jadhwani, for the Petitioner.
Mr. Nirmal Mohanty, for the Respondents.

CORAM: M.S.SANKLECHA, &
G.S.KULKARNI, JJ.
DATE : 10th SEPTEMBER, 2015.

P.C:-

This Petition under Article 226 of the Constitution of India inter alia, seeks following directions:-

(a) To quash and set aside the orders dated 26th June, 2014 and 23rd July, 2014 passed by the Assessing Officer and the Addl. Commissioner of Income Tax (Add. CIT) respectively under Section 220(6) of the Income Tax Act, 1961 (the Act). Both the above orders rejected the Petitioner's application for stay of demand, pending disposal of the Petitioner's appeal to the Commissioner of Income Tax (Appeals) [CIT(A)] from the Assessment Order dated 26th March, 2014 passed in respect of Assessment Year 2008-09;

(b) The Assessing Officer to keep in abeyance the proceedings for recovery of tax consequent to the Assessment Order dated 26th March, 2014 passed in respect of Assessment Year 2008-09 till the disposal of the Petitioner's appeal by the CIT(A); and

(c) To direct the CIT(A) to take up and dispose of the Petitioner's appeal expeditiously.

3 For the Assessment Year 2008-09, the Petitioner had filed its Return of Income, declaring an income of Rs.6.68 lakhs which was processed under Section 143(1) of the Act. Thereafter, by notice under Section 148 of the Act, the Assessing Officer sought to re-open Assessment for the A. Y. 2008-09. Consequent thereto the Assessing Officer passed an order dated 26th March, 2014 under Section 143 read with Section 147 of the Act, determining the Petitioner's income at Rs.2.71 Crores.

4 Being aggrieved, the Petitioner filed an appeal from the order dated 26th March, 2014 to the CIT(A). Thereafter the Petitioner sought stay of the demand arising out of the order dated 26th March, 2014 from the Assessing Officer under Section 220(6)of the Act till the disposal of its appeal by the CIT(A).

5 On 26th June, 2014, the Assessing Officer rejected the Petitioner's application for stay without considering the submission of the Petitioner by merely stating as under:-

> *" …. …. …. ….*
> *The request of the assessee has been examined in view of Circular No.530 dt. 6.3.1989, 589 dated 16.1.1991 and instruction No.1914 dated 19.05.2003. After considering the facts and circumstances, the assessee's request is hereby rejected as it does not merit any consideration."*

6 Being aggrieved, the Petitioner filed a further application seeking a stay under Section 220(6) of the Act with the Addl. CIT. This application for stay was rejected as under:-

> " Subject: Stay of recovery of demand of Rs.1,58,27,330/- in order u/s. 143(3) r.w.s. 147, notice u/s. 156 of the Income Tax Act, 1961 dated 26th March, 2014 and subsequent order u/s. 220(6) of the Income Tax Act, 1961 dated 26th June 2014 for A. Y. 2008-09.
>
> *Please refer to the above matter and hearing on 16.07.2014 in this regard. Your submissions during the stay proceedings were considered carefully vis-a-visa facts in the assessment record. It is found that there is no merit in your application and your request for stay of demand is rejected."*

7 Both the above orders dated 26th June, 2014 and 23rd July, 2014 of the Assessing Officer and the Addl. CIT respectively are non-speaking orders and passed in total breach of the law as laid down by this Court in KEC International v/s. B. R. Balakrishnan 251 ITR 158. The above decision had laid down the following guidelines to be kept in mind while disposing of an application for stay under Section 220 (6) of the Act:-

> *"(a) While considering the stay application, the authority concerned will at least briefly set out the case of the assessee.*
>
> *(b) In cases where the assessed income under the impugned order far exceeds returned income, the authority will consider whether the assesssee has made out a case for unconditional stay. If not, whether looking to the questions involved in appeal, a part of the amount should be ordered to be deposited for which purpose, some short prima facie reasons could be given by the authority in its order.*

> *(c) In cases where the assessee relies upon financial difficulties, the authority concerned can briefly indicate whether the assessee is financially sound and viable to deposit the amount if the authority wants the assessee to so deposit.*
>
> *(d) The authority concerned will also examine whether the time to prefer an appeal has expired. Generally, coercive measures may not be adopted during the period provided by the statute to go in appeal. However, if the authority concerned comes to the conclusion that the assessee is likely to defeat the demand, it may take recourse to coercive action for which brief reasons may be indicated in the order.*
>
> *(e) We clarify that if the authority concerned complies with the above parameters while passing orders on the stay application, then the authorities on the administrative side of the Department like respondent No.2 herein need not once again give reasoned order.*
>
> *The above parameters are not exhaustive. They are only recommendatory in nature."*

Both the orders dated 26th June, 2014 and 26th July, 2014 are devoid of even mention leave alone consideration of the Petitioner's case. Consequently both the orders are quashed and set aside.

8 Normally, we would have restored the application under Section 220(6) of the Act for final disposal by the Assessing Officer in line with the decision of this Court in KEC International (supra), but are not doing so in this case. This for the reason that we are informed that the CIT(A) had already fixed the hearing of the Appeal on 7th September, 2015. At that time, it appears that the Petitioner sought time and the Appeal has now been fixed for hearing on 22nd September, 2015. As the appeal itself is now being finally heard by CIT(A) beginning on the 22nd September, 2015, it would be appropriate that Respondent do not adopt any coercive proceedings till the CIT(A) to disposes of Petitioner's Appeal

on merits and for a period of two weeks thereafter.

9 However, it is made clear that the Petitioner will co-operate with the CIT(A) for early disposal of the appeal. In case the Petitioner does not co-operate and seeks an adjournment without any justification, the Respondent is at liberty to move this Court for modification of this order.

10 **Petition disposed of** in the above terms. No order as to costs.

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