IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

WP(C).No. 8826 of 2015 (C)

PETITIONER :

M/S NEW COCHIN REAL ESTATE DEVELOPERS,
(NOW DEFUNCT), CITADEL HOUSE, "C" NAGAR NADATHARA P.O.
THRISSUR-680751 REPRESENTED BY ITS MANAGING
PARTNER SHRI.MARTIN SEBASTIAN, AGED 50 YEARS,

BY ADVS.SRI.T.M.SREEDHARAN (SR.)
SRI.V.P.NARAYANAN
SMT.DIVYA RAVINDRAN

RESPONDENTS :
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1. **THE DY.COMMISSIONER OF INCOME TAX,**
   CENTRAL CIRCLE-1, ERNAKULAM-82016.

2. **THE COMMISSIONER OF INCOME TAX (APPEALS)-IV**
   6TH FLOOR, KERABHAVAN, S.R.V.H.S. ROAD
   COCHIN-682016.

3. **THE ASSISTANT REGISTRAR**
   THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH
   KENDRIYA BHAVAN, BLOCK NO.C1 & C2, IST FLOOR,
   KAKKANAD, COCHIN-682031.

4. **THE TAX RECOVERY OFFICER,**
   CENTRAL, COCHIN-682011.

R1 TO R4 BY SRI.JOSE JOSEPH, SC, FOR INCOME TAX

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 8826 of 2015 (C)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: **TRUE COPY OF THE ASSESSMENT ORDER ALONG WITH DEMAND NOTICE DATED 31.12.2010 ISSUED BY THE IST RESPONDENT FOR AY-2007-08.**

EXHIBIT P2: **TRUE COPY OF THE MEMORANDUM OF APPEAL DATED 12.3.2015 FILED BEFORE THE 2ND RESPONDENT FOR AY-2007-08.**

EXHIBIT P3: **TRUE COPY OF THE STAY PETITION DATED 16.3.2015 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR AY-2007-08.**

EXHIBIT P4: **TRUE COPY OF THE PETITION FOR CONDONATION OF DELAY DATED 12.3.2015 IN FILING THE APPEAL BEFORE THE 2ND RESPONDENT FOR AY-2007-08.**

EXHIBIT P5: **TRUE COPY OF THE PENALTY ORDER ALONG WITH DEMAND NOTICE DATED 30.6.2011 ISSUED BY THE IST RESPONDENT FOR AY-2007-08.**

EXHIBIT P6: **TRUE COPY OF MEMORANDUM OF APPEAL DATED 12.3.2015 FILED BEFORE THE 2ND RESPONDENT FOR AY-2007-08.**

EXHIBIT P7: **TRUE COPY OF THE CONDONATION OF DELAY DATED 12.3.2015 IN FILING THE APPEAL BEFORE THE 2ND RESPONDENT FOR AY 2007-08.**

EXHIBIT P8: **TRUE COPY OF THE STAY PETITION DATED 16.3.2015 FILED BEFORE THE 2ND RESPONDENT FOR AY-2007-08.**

EXHIBIT P9: **TRUE COPY OF THE ASSESSMENT ORDER ALONG WITH DEMAND NOTICE DATED 31.2.2010 ISSUED BY THE IST RESPONDENT FOR AY-2008-09.**

EXHIBIT P10: **TRUE COPY OF THE APPELLATE ORDER DATED 23.12.2014 ISSUED BY THE 2ND RESPONDENT FOR AY-2008-09.**

EXHIBIT P11: **TRUE COPY OF MEMORANDUM OF APPEAL DATED 6.3.2015 FILED BEFORE THE 3RD RESPONDENT ALONG WITH THE HEARING NOTICE DATED 23.12.2014 2015 FOR AY-2008-09.**

EXHIBIT P12: **TRUE COPY OF THE STAY PETITION DATED 17.3.2015 FLED BY THE PETITIONER BEFORE THE 3RD RESPONDENT FOR AY-2008-09.**

EXHIBIT P13: **TRUE COPY OF NOTICE DATED 24.2.2015 IN FORM NO.ITPC 13 ISSUED BY THE 4TH RESPONDENT.**

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.8826 OF 2015

Dated this the 19th day of March, 2015

J U D G M E N T

Against Ext.P1 assessment order passed under the Income Tax Act, the petitioner preferred Ext.P2 appeal, Ext.P4 delay condonation petition and P3 stay petition before the 2nd respondent. Similarly against Ext.P10 first appellate order, petitioner preferred Ext.P11 appeal and Ext.P12 stay petition before the 3rd respondent. Further, against Ext.P5 penalty order, the petitioner has preferred Ext.P6 appeal, Ext.P7 delay condonation petition and Ext.P8 stay petition before the 2nd respondent. The apprehension of the petitioner is that recovery steps, for recovery of the amounts confirmed against the petitioner by Exts.P1, P5, and P10 orders, will be proceeded with, pending disposal of the stay petition by the 2nd respondent.

2. I have heard the learned counsel for the petitioner and the learned Standing counsel for the respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I dispose the writ petition with the following directions:

i. The 2nd and 3rd respondents shall consider and pass orders on stay petitions and delay condonation petitions within a period of two months from the date of receipt of a copy of this judgment, after hearing the petitioner.

ii. Recovery steps for recovery of tax and penalty amounts confirmed against the petitioner by Exts.P1, P5 and P10 orders shall be kept in abeyance till orders are passed by the 2nd and 3rd respondents as directed above and communicated to the petitioner.

iii. The order to be passed by the 2nd and 3rd respondents shall be a reasoned one adverting to the contentions of the petitioner regarding existence of a prima facie case for a stay of recovery pending disposal of the appeal.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns