IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

WP(C).No. 27921 of 2015 (M)

PETITIONER :

THE MANJOOR SERVICE CO-OPERATIVE BANK LTD.NO. K.73,
MANJOOR P.O, KURUPPANTHARA,
KOTTAYAM, REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.O.D.SIVADAS

RESPONDENT(S):

1. THE COMMISSIONER OF INCOME TAX (APPEALS),
   AYAKAR BHAVAN, SASTHRI ROAD,
   KOTTAYAM -686 001.

2. THE INCOME TAX OFFICER, WARD 5,
   KOTTAYAM-686 004

R1 & R2 BY SR.COUNSEL SRI.P.K.R.MENON,GOI(TAXES)
SRI.JOSE JOSEPH, SC, FOR INCOME TAX

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

WP(C).No. 27921 of 2015 (M)

APPENDIX

PETITIONER(S)' EXHIBITS

P1- **COPY OF THE ASSESSMENT ORDER DATED 23.3.2015 ISSUED BY THE 2ND RESPONDENT**

P2- **COPY OF THE APPEAL DATED 22.4.2015 FILED BEFORE TEH 1ST RESPONDENT**

P3- **COPY OF THE STAY PETITON DATED 27.4.2015 FILED BEFORE TEH 1ST RESPONDENT**

P4- **COPY OF THE ORDER DATED 15.6.2015 ISSUED BY THE 1ST RESPONDENT**

P5- **COPY OF TH NOTICE DATED 3.8.2015 ISSUED BY THE 2ND RESPONDENT**

P6- **COPY OF THE STAY ORDER DATED 23.8.2014 ISSUED BY THIS HON'BLE COURT IN IA NO.2573 FO 2014 IN ITA NO.198 OF 2014**

P7- **COPY OF THE STAY PETITION DATED 18/9/2015**

P8- **COPY OF THE PROCEEDINGS DATED 22/9/2015**

RESPONDENT(S)' EXHIBITS: **NIL**

/TRUE COPY/

P.A.TO JUDGE

sts

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.27921 of 2015

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Dated this the 14th day of October, 2015

JUDGMENT

The petitioner society, being aggrieved by Ext.P1 assessment order, had filed Ext.P2 appeal together with Ext.P7 stay petition before the 1st respondent. The petitioner had also moved a stay petition before the Commissioner of Income Tax, who had granted the petitioner instalments to pay the amounts confirmed against the petitioner by Ext.P1 assessment order and stayed recovery proceedings in the meanwhile. The petitioner moved Ext.P7 stay petition before the appellate authority so as to get a stay against recovery, pending disposal of the appeal. By Ext.P8 order, the appellate authority, without going to the merits of the case, merely referred to the stay granted by the Commissioner of Income Tax and directed the petitioner to approach the said authority in connection with any difficulty faced by the petitioner in payment of the instalments offered by the Assessing Officer. It is challenging the said order that the petitioner has approached this Court.

2. I have heard the learned counsel for the petitioner and the learned Standing counsel for the Income Tax Department.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I am of the view

that, the 1st respondent ought to consider Ext.P7 stay application preferred by the petitioner on merits, untrammelled by the orders of the Commissioner of Income Tax or the Assessing Officer, which can only be orders relatable to Section 220 (6) of the Income Tax Act. When the 1st respondent considers an application for stay in a pending appeal before him, he acts as an appellate authority and he is empowered to pass such incidental orders as are required to render the appellate remedy effective. I therefore quash Ext.P8 order passed by the 1st respondent, and direct the 1st respondent to consider and pass orders on Ext.P7 stay application on merits, after hearing the petitioner, within a period of one month from the date of receipt of a copy of this judgment. I make it clear that, till such time as orders are passed by the 1st respondent as directed above and communicated to the petitioner coercive steps for recovery of amounts confirmed against the petitioner by the assessment order shall be kept in abeyance.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/14.10.15