**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR**

**FRIDAY, THE 18TH DAY OF SEPTEMBER 2015/27TH BHADRA, 1937**

**WP(C).No. 28467 of 2015 (G)**

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**PETITIONER(S):**

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**ST.THOMAS COLLEGE STAFF CO-OPERATIVE SOCIETY LTD. No.434**
**ARUNAPURAM PO, PALA, KOTTAYAM DISTRICT**
**REPRESENTED BY ITS SECRETARY**

**BY ADVS.SRI.SUNIL CYRIAC**
**SMT.MABLE.C.KURIAN**

**RESPONDENT(S):**

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1. **THE INCOME TAX OFFICER, WARD -4**
   **OFFICE OF THE ADDITIONAL COMMISSIONER OF**
   **INCOME TAX, KOTTAYAM RANGE, KOTTAYAM-686 001**

2. **THE COMMISSIONER OF INCOME TAX (APPEALS)**
   **KOTTAYAM, OFFICE OF THE COMMISSIONER OF**
   **INCOME TAX (APPEALS), KOTTAYAM- 686 001**

**R BY SRI.JOSE JOSEPH, SC, FOR INCOME TAX**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**WP(C).No. 28467 of 2015 (G)**
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**APPENDIX**

**PETITIONER'S EXHIBITS:-**
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|---|---|
| **EXHIBIT P1** | **TRUE COPY OF THE ASSESSMENT ORDER DATED 26.03.2015 OF THE 1ST RESPONDENT** |
| **EXHIBIT P2** | **TRUE COPY OF THE NOTICE OF DEMAND DATED 26.03.2015 ISSUED BY THE 1ST RESPONDENT.** |
| **EXHIBIT P3** | **TRUE COPY OF APPEAL DATED 28.04.2015 FILED BY THE PETITIONER.** |
| **EXHIBIT P4** | **TRUE COPY OF THE STAY PETITION DATED 13.05.2015 FILED BY THE PETITIONER** |
| **EXHIBIT P5** | **TRUE COPY OF THE ORDER DATED 14.08.2015 OF THE 2ND RESPONDENT** |
| **EXHIBIT P6** | **TRUE COPY OF JUDGMENT DATED 17.08.2015 IN WP(C) No. 24911/2015 OF THIS HON'BLE COURT.** |

**RESPONDENT'S EXHIBITS:-**
**--------------------------------------** **NIL**

// True copy //

PA to Judge

das

**A.K.JAYASANKARAN NAMBIAR, J.**

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**W.P.(C). No. 28467 of 2015**

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**Dated this the 18th day of September, 2015**

**JUDGMENT**

The challenge in the writ petition is against Ext.P5 order of the 2nd respondent, whereby the 2nd respondent rejected a stay petition filed by the petitioner along with an appeal against an assessment order for the assessment year 2012-2013, on the ground that the 2nd respondent does not have powers conferred under the Income Tax Act, for considering and passing orders in stay applications filed along with the appeals. It is the submission of the learned counsel for the petitioner that the stand taken by the 2nd respondent is legally flawed in that it is settled law that every authority under the Income Tax Act, that is conferred with a power to decide an appeal, also has an inherent power to pass orders in incidental applications, such as an application for stay, that is filed along with the appeals.

2. I have heard the learned counsel appearing for the petitioner as also the learned Government Pleader appearing for the respondents.

On a consideration of the facts and circumstances of the case and the submissions made across the bar, and taking note of the settled proposition that an authority having the power to decide an appeal under a statutory provision also has the inherent power to consider and pass orders that are required to be passed to render the appellate power effective (**See: ITO v Mohammed Kunhi - AIR 1969 SC 430**), I dispose the writ petition with a direction to the 2nd respondent to consider and pass orders on Ext.P4 stay petition on merits, within a period of two months from the date of receipt of a copy of this judgment, after hearing the petitioner. I make it clear that till such time as orders are passed by the 2nd respondent as directed and communicated to the petitioner, coercive steps pursuant to Ext.P1 assessment order and Ext.P2 demand notice, for recovery of amounts confirmed against the petitioner by the assessment order, shall be kept in abeyance.

Sd/-
**A.K.JAYASANKARAN NAMBIAR**
**JUDGE**

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