IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

WP(C).No. 29350 of 2015 (P)

PETITIONER(S):

M/S. KERALA RURAL EMPLOYMENT AND WELFARE SOCIETY,
CORPORATION JUBILEE BUILDING,
OVERBRIDGE JN., MG ROAD,
TRIVANDRUM - 695 001,
REPRESENTED BY SECRETARY.

BY ADVS.SRI.ANIL D. NAIR
SRI.R.SREEJITH
SMT.ROSIE ATHULYA JOSEPH
KUM.SOUMYA PRAKASH
SMT.O.A.NURIYA
KUM.MEKHALA M.BENNY

RESPONDENT(S):
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1. **DEPUTY COMMISSIONER OF INCOME TAX,**
   EXEMPTION CIRCLE, TRIVANDRUM - 695 001.

2. **COMMISSIONER OF INCOME TAX (APPEALS),**
   TRIVANDRUM - 695 001.

BY ADV. SRI.K.M.V.PANDALAI, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 29350 of 2015 (P)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: TRUE COPY OF THE ASSESSMENT ORDER DTD.23.3.2015 FOR THE YEAR 2012-13 ISSUED TO THE PETITIONER BY THE FIRST RESPONDENT.

EXT.P2: TRUE COPY OF APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR THE A.Y.2012-2013.

EXT.P3: TRUE COPY OF STAY PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR THE A.Y.2012-2013.

EXT.P4: TRUE COPY FO THE STAY ORDER DTD.18.9.2015 PASSED BY THE 2ND RESPONDENT FOR THE A.Y.2012-2013.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 29350 of 2015
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Dated this the 29th day of September, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P4 conditional order of stay, passed by the 2nd respondent in an appeal preferred by the petitioner against Ext.P1 assessment order under the Income Tax Act, for the assessment year 2012-2013. The challenge in the writ petition against Ext.P4 order is essentially that the 2nd respondent, while passing the stay order, did not exercise its discretion validly.

2. I have heard the learned counsel appearing for the petitioner as also the learned Standing Counsel appearing for the respondents.

On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that in Ext.P4 order, the 2nd respondent has granted a stay of the demand outstanding against the petitioner on condition that the petitioner remits 75% of the said demand in six equal monthly installments commencing from 30.09.2015. The conditional order was passed taking into account the fact that the petitioner had challenged only the disallowance with regard to excess depreciation and gratuity expenses to an extent of approximately Rs.37,00,000/- as against an assessed income of approximately Rs.1,42,00,000/-. On a consideration of the reasons given by the 2nd respondent in Ext.P4 order, I do not see any scope for interfering with the said order in these proceedings under Article 226 of the Constitution of India. I also note that in Ext.P4 order, the 2nd respondent has granted six equal monthly installments commencing from 30.09.2015 for the petitioner to remit 75% of the demand outstanding pursuant to Ext.P1 assessment order. Under the said circumstances, the writ petition in its challenge against Ext.P4 order fails, and is accordingly, dismissed.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das