IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

WP(C).No. 29577 of 2015 (V)

PETITIONER :

ELIKULAM SERVICE CO-OPERATIVE BANK LTD.NO.K.158,
REPRESENTED BY ITS SECRETARY, HEAD OFFICE, ELIKULAM,
MADUKKAKUNNU P.O. 686 577, (VIA) POOVARANY,
KOTTAYAM DISTRICT.

BY ADVS.SRI.B.ASHOK SHENOY
SRI.K.V.GEORGE
SRI.P.N.RAJAGOPALAN NAIR
SRI.P.S.GIREESH
SRI.RIYAL DEVASSY
SRI.THOMAS P.MAKIL

RESPONDENT(S):
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1. **THE COMMISSIONER OF INCOME TAX (APPEALS),**
   FIRST FLOOR, KOTTAYAM PUBLIC LIBRARY BUILDING,
   SASTHRI ROAD, KOTTAYAM -686 001.

2. **THE INCOME TAX OFFICER,**
   WARD-5, PUBLIC LIBRARY BUILDING, SASHTRI ROAD,
   KOTTAYAM-686 001.

BY SRI.JOSE JOSEPH, SC, FOR INCOME TAX

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No. 29577 of 2015 (V)

APPENDIX

PETITIONER(S)' EXHIBITS

P1- TRUE COPY OF CERTIFICATE DATED 7.10.2013 ISSUED BY THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), KANJIRAPPALLY.

P2- TRUE COPY OF BYE-LAWS OF PETITIONER APPROVED BY THE REGISTRAR OF CO-OPRATIVE SOCIETIES.

P3- TRUE COPY OF ASSESSMENT ORDER DATED 12.3.2015 PASSED BY 2ND RESPONDENT FOR THE ASSESSMENT YEAR 2012-13 IN RESPECT OF PETITIONER UNDER PAN-AAABT2060K.

P4- TRUE COPY OF NOTICE OF DEMAND NO. DATED 12.3.2015 ISSUED BY 2ND RESPONDENT TO PETITIONER UNDER PAN-AAABT2060K.

P5- TRUE COPY OF APPEAL DATED 23.4.2015 FILED BY PETITIONER BEFORE 1ST RESPONDENT.

P6- TRUE COPY OF APPLICATION FOR STAY DATED 23.4.2015 FILED BY PETITIONER BEFORE 1ST RESPONDENT.

P7- TRUE COPY OF ORDER DATED 29.7.2015 PASSED BY 1ST RESPONDENT ON EXHIBIT P6 APPLICATION FOR STAY.

P8- TRUE COPY OF REPRESENTATION FOR STAY DATED 14.5.2015 FILED BY PETITIONER BEFORE 2ND RESPONDENT.

P9- TRUE COPY OF LETTER NO.W5/KTM/AAABT 2060K:12-13/14-15 DATED 6.8.2015 ISSUED BY 2ND RESPONDENT TO PETITIONER.

P10- TRUE COPY OF REPRESENTATION DATED 18.8.2015 SUBMITTED BY PETITIONER TO 2ND RESPONDENT.

P11- TRUE COPY OF LETTER NO.W5/KTM/ AAABT 2060K:12-14/14-15 DATED 18.8.2015 ISSUED BY 2ND RESPONDENT TO PETITIONER.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No.29577 of 2015

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Dated this the 30th day of September, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P7 order of the 1st respondent, whereby the 1st 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 1st respondent does not have powers conferred under the Income Tax Act, for considering and passing orders in stay application filed along with the appeal. It is the submission of the learned counsel for the petitioner that the stand taken by the 1st 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 appeal.

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, 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 1st respondent to consider and pass orders on Ext.P6 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 1st respondent as directed 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

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