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. 29588 of 2015 (W)

PETITIONER(S):

CHIRAKKADAVU SERVICE CO-OPERATIVE BANK LTD. NO.2057,
REPRESENTED BY ITS SECRETARY, HEAD OFFICE,
CHIRAKKADAVU, CHIRAKKADAVU P.O., PIN-686 520,
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,
SASTHRI ROAD, KOTTAYAM-686 001.

BY ADV. SRI.JOSE JOSEPH, SC.

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

rs.

WP(C).No. 29588 of 2015 (W)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1	**COPY OF THE CERTIFICATE DATED 17/11/2014 ISSUED BY THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), KANJIRAPPALLY.**
EXT.P2	**COPY OF THE BYE-LAWS OF PETITIONER APPROVED BY THE REGISTRAR OF CO-OPERATIVE SOCIETIES.**
EXT.P3	**COPY OF THE COMMON ORDER DATED 31/07/2014 IN ITA NO.123/COCH/2012 AND CONNECTED CASES OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH.**
EXT.P4	**COPY OF THE ASSESSMENT ORDER DATED 19/03/2015 PASSED BY 2ND RESPONDENT FOR THE ASSESSMENT YEAR 2012-13 IN RESPECT OF PETITIONER UNDER PAN-AAABT2064P.**
EXT.P5	**COPY OF THE NOTICE OF DEMAND DATED 19/03/2015 ISSUED BY 2ND RESPONDENT TO PETITIONER UNDER PAN-AAABT2064P.**
EXT.P6	**COPY OF THE APPEAL DATED 23/04/2015 FILED BY PETITIONER BEFORE 1ST RESPONDENT.**
EXT.P7	**COPY OF THE APPLICATION FOR STAY DATED 23/04/2015 FILED BY PETITIONER BEFORE 1ST RESPONDENT.**
EXT.P8	**COPY OF THE ORDER DATED 22/07/2015 PASSED BNY 1ST RESPONDENT ON EXT.P7 APPLICATION FOR STAY.**
EXT.P9	**COPY OF THE REPRESENTATION FOR STAY DATED 04/08/2015 FILED BY PETITIONER BEFORE 2ND RESPONDENT.**
EXT.P10	**COPY OF THE LETTER NO.W5/KTM/AAABT2064P: 12-132/15-16 DATED 06/08/2015 ISSUED BY 2ND RESPONDENT TO PETITIONER.**
EXT.P11	**COPY OF THE REPRESENTATION DATED 17/08/2015 ISSUED BY PETITIONER TO 2ND RESPONDENT.**
EXT.P12	**COPY OF THE LETTER NO.W5/KTM/AAABT2064P: 12-14/15-16 DATED 18/08/2015 ISSUED BY 2ND RESPONDENT TO PETITIONER.**

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

//TRUE COPY//

P.S. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No.29588 of 2015

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Dated this the 30th day of September, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P8 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.P7 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

rsr