IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

WP(C).No. 30528 of 2015 (M)

PETITIONER(S):

EZHUPUNNA SERVICE CO-OPERATIVE BANK NO.A-953,
EZHUPUNNA P.O, CHERTHALA, ALAPPUZHA DISTRICT,
REPRESENTED BY ITS SECRETARY.

BY ADVS.SRI.M.SASINDRAN
SRI.S.SHYAM KUMAR

RESPONDENT(S):

----

1. THE COMMISSIONER OF INCOME-TAX (APPEALS),
KOTTAYAM, FIRST FLOOR, KOTTAYAM PUBLIC LIBRARY BUILDING,
SASTHRI ROAD, KOTTAYAM-686001.

2. THE INCOME TAX OFFICER,
WARD V, ALAPPUZHA-688001.

BY SRI.JOSE JOSEPH, SC,

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 30528 of 2015 (M)
--

APPENDIX

PETITIONERS' EXHIBITS

P1: **COPY OF THE ASSESSMENT ORDER DATED 27/3/15 MADE UNDER SECTION 143(3) OF THE ACT.**

P2: **COPY OF THE APPEAL MEMORANDUM FILED BEFORE THE R1**

P3: **COPY OF THE STAY PETITION FILED ALONG WITH THE EXT.P2 APPEAL**

P4: **COPY OF THE ORDER PASSED BY THE R1 REJECTING THE EXT.P3 STAY PETITION**

P5: **COPY OF THE REPRESENTATION DATED 13/12/05 SUBMITTED BY THE PETITIONER BEFORE THE R7**

P6: **COPY OF THE REPRESENTATION DATED 13/12/05 SUBMITTED BY THE PETITIONER BEFORE THE R6**

P7: **COPY OF THE INSTURCTION NO.1914.**

RESPONDENTS' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

==

W.P.(C). No. 30528 of 2015

==

Dated this the 8th day of October, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P4 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 applications filed along with the appeals. 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 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 1st respondent to consider and pass orders on Ext.P3 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 pursuant to Ext.P1 assessment order for recovery of amounts confirmed against the petitioner, shall be kept in abeyance.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das 08.10.15