IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

WP(C).No. 31398 of 2015 (Y)

PETITIONER(S):

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1. M/S.SAHYADRI CO-OPERATIVE CREDIT SOCEITY LTD
   1ST FLOOR, AMAL JYOTHI BUILDING
   CATHEDRAL ROAD, KANJIRAPPALLY, KOTTAYM 686 507
   REPRESENTED BY ITS MANAGING DIRECTOR - JOY JOHN VAIDYA

BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS
SRI.RAJA KANNAN

RESPONDENT(S):

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1. THE UNION OF INDIA, REPRESENTED BY THE SECRETARY
   MINISTRY OF FINANCE (DEPT. OF REVENUE)
   NORTH BLOCK, NEW DELHI - 110 001

2. THE INCOME TAX OFFICER
   WARD - 4, KOTTAYAM 686 001

3. THE COMMISSIONER OF INCOME TAX (APPEALS)
   1ST FLOOR, KOTTAYAM LIBRARY BUILDING
   SASTHRI ROAD, KOTTAYAM 686 001

4. THE CHIEF COMMISSIONER
   AYAKAR BHAVAN, KOWDIYAR
   THIRUVANANTHAPURAM - 695 003

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

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 31398 of 2015 (Y)

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1	COPY OF THE ASSESSMENT ORDER DTD. 11.03.15 PASSED BY THE 2ND RESPONDENT.
EXT.P2	COPY OF THE APPEAL MEMORANDUM (WITHOUT ANNEXURES) DTD. 10.4.15 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT, AGAINST EXT.P1 ORDER.
EXT.P3	COPY OF THE STAY PETITION DTD. 10.6.15 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT AGAINST EXT.P1 ORDER.
EXT.P4	COPY OF THE ORDER DTD. 14.8.15 PASSED BY THE 3RD RESPONDENT.

RESPONDENTS EXHIBITS: NIL

// TRUE COPY //

P.A TO JUDGE

SB

K. VINOD CHANDRAN, J.
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W.P.(C) No.31398 of 2015 - Y
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Dated this the 15th day of October, 2015

J U D G M E N T

It is unfortunate that the statutory authority conferred with powers of appeal has by the impugned order rejected the stay application on the ground that the appellate authority lacks jurisdiction to pass orders of stay against the recovery of tax. This court in W.P.(C) No. 28467 of 2015, had to bring to the notice of the appellate authority, a judgment of the Hon'ble Supreme Court, in **ITO** v. **Mohammed Kunhi [AIR 1969 SC 430]**, which dilates upon the inherent power of an appellate authority to consider the stay application even without the statute conferring such specific powers on the authority.

2. The impugned order at Ext.P4 is set aside. The Commissioner of Income Tax (Appeals) is directed to consider

the matter afresh and till then there shall be an interim stay of the recovery. The recovery shall depend upon the orders passed by the Commissioner of Income Tax (Appeals).

The writ petition would stand disposed of.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB/15/10 /2015

// true copy //

P.A to Judge.