IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 20TH DAY OF OCTOBER 2015/28TH ASWINA, 1937

WP(C).No. 32053 of 2015 (F)

PETITIONER(S):

THE THACHANGANADAM SERVICECO-OP.BANK LTD NO.10152,
THACHANGANADAM P.O., PATTIKKAD (VIA),
MALAPPURAM DISTRICT-679325,
REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.O.D.SIVADAS

RESPONDENT(S):
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1. **THE COMMISSIONER OF INCOME TAX (APPEALS),**
   AYAKAR BHAVAN, KOZHIKODE-673001.

2. **THE INCOME TAX OFFICER, WARD (4), TIRUR-676101.**

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

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 32053 of 2015 (F)

APPENDIX

PETITIONERS' EXHIBITS

P1: COPY OF THE ASSESSMENT ORDER DATED 7/3/15 ISSUED BY THE R2

P2: COPY OF THE APPEAL DATED 30/3/15 FILED BEFORE THE R1

P3: COPY OF THE STAY PETITION DATED 8/4/15 FILED BEFORE THE R1

P4: COPY OF THE STAY ORDER DATED 23/9/14 ISSUED BY THIS HON'BLE COURT IN IA.2573 OF 2014 IN ITA 198/14

P5: COPY OF THE ORDER DATED 22/9/15 ISSUED BY THE R1

RESPONDENTS' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 32053 of 2015
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Dated this the 20th day of October, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P5 order passed by the 1st respondent, in an appeal preferred by the petitioner against an assessment order under the Income Tax Act. The case of the petitioner in the writ petition is essentially that, while passing Ext.P5 order, the 1st respondent did not exercise its discretion validly. It is submitted that the main issue involved in the appeal is also the subject matter of an ITA before this Court, in which this Court had granted a complete stay against recovery of amounts confirmed against the petitioner during the pendency of the appeal. The learned counsel for the petitioner would submit that the ITA has since been heard and it has been reserved for judgment. It is in the meanwhile, that Ext.P5 order has been passed in appeals preferred by the petitioner on the same issue.

On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that in Ext.P5 order, the 1st respondent has directed the petitioner to deposit 50% of the amount confirmed against him by the assessment order, as a condition for hearing the appeal. Inasmuch as the issue involved in the appeal preferred by the petitioner is pending consideration before this Court in ITAs preferred by the petitioner and similarly situated persons, and this Court has granted a complete stay against recovery, pending disposal of the Income Tax Appeal, I quash Ext.P5 order and direct the 1st respondent to consider and pass orders in Ext.P2 appeal preferred by the petitioner, within a period of three months, after hearing the petitioner. I make it clear that, pending disposal of the appeal, the recovery steps, if any, initiated against the petitioner for recovery of amounts confirmed against the petitioner by Ext.P1 assessment order, shall be kept in abeyance.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

das /21.10.15