

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 21ST DAY OF OCTOBER 2015/29TH ASWINA, 1937

WP(C).No. 32091 of 2015 (J)

PETITIONER(S) :

**THE CHENGALAM SERVICE COOPERATIVE BANK LTD.NO.K. 253,
REPRESENTED BY ITS SECRETARY, HEAD OFFICE, 1-201,
CHENGALAM P.O., KOTTAYAM DISTRICT - 686 585.**

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

RESPONDENT(S) :

- 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 SRI.JOSE JOSEPH, SC, FOR INCOME TAX

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
21-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

AMV

WP(C).No. 32091 of 2015 (J)

APPENDIX

PETITIONER(S) EXHIBITS :

- P1: COPY OF CERTIFICATE PDY/3164/2015 DATED 12.10.2015 ISSUED BY THE ASSISTANT REGISTRAR OF COOPERATIVE SOCIETIES (GENERAL), KOTTAYAM.**
- P2: COPY OF BYE-LAWS OF PETITIONER APPROVED BY THE REGISTRAR OF COOPERATIVE SOCIETIES.**
- P3: COPY OF ASSESSMENT ORDER DATED 13.3.2015 PASSED BY 2ND RESPONDENT FOR THE ASSESSMENT YEAR 2012-13 IN RESPECT OF PETITIONER UNDER PAN - AABAT 8898D.**
- P4: COPY OF NOTICE OF DEMAND DATED 13.3.2015 ISSUED BY 2ND RESPONDENT TO PETITIONER UNDER PAN - AABAT8898D.**
- P5: COPY OF APPEAL DATED 18.4.2015 FILED BY PETITIONER BEFORE 1ST RESPONDENT.**
- P6: COPY OF APPLICATION FOR STAY DATED 18.4.2015 FILED BY THE PETITIONER BEFORE 1ST RESPONDENT.**
- P7: COPY OF ORDER DATED 4.8.2015 PASSED BY 1ST RESPONDENT ON EXT.P6 APPLICATION FOR STAY, UNDER FILE NO.ITA NO.K 22/STAY/CIT(A)/KTM/15-16.**
- P8: COPY OF APPLICATION FOR STAY DATED 17.8.2015 FILED BY PETITIONER BEFORE 2ND PETITIONER.**
- P9: COPY OF LETTER NO.W5/KTM/AABAT8898D:12-13/15-16 DATED 25.8.2015 ISSUED BY 2ND RESPONDENT TO PETITIONER.**

RESPONDENTS EXHIBITS : NIL

/TRUE COPY/

PA.TO JUDGE

AMV

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 32091 of 2015

Dated this the 21st day of October, 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 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.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 pursuant to Ext.P3 assessment order and Ext.P4 demand notice, for recovery of amounts confirmed against the petitioner by the assessment order, shall be kept in abeyance.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE