

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

WP(C).No. 32920 of 2015 (L)

PETITIONER(S) :

**M/S. A.M.MOTORS,
VARANGODE, DOWN HILL P.O.,
MALAPPURAM- 676 519, REPRESENTED BY ITS
MANAGING PARTNER, A.MOHAMMED IQBAL.**

**BY ADVS.SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON**

RESPONDENT(S) :

- 1. THE ASST. COMMISSIONER OF INCOME TAX,
CIRCLE II (2), TIRUR- 678 101.**
- 2. THE COMMISSIONER OF INCOME TAX (APPEALS),
AYAKAR BHAVAN, NORTH BLOCK, KOZHIKODE- 673 001.**

BY ADV. SRI.K.M.V.PANDALAI, INCOME TAX DEPARTMENT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 29-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

**EXHIBIT P1: COPY OF ASSESSMENT ORDER ISSUED BY
THE 1ST RESPONDENT DATED 27.10.2006.**

**EXHIBIT P2: COPY OF ORDER ISSUED BY THE INCOME TAX APPELLATE
TRIBUNAL, COCHIN DATED 27.07.2012.**

**EXHIBIT P3: COPY OF ASSESSMENT ORDER ISSUED BY
THE 1ST RESPONDENT DATED 31.03.2014.**

**EXHIBIT P4: COPY OF APPEAL FILED BY THE PETITIONER BEFORE
THE 2ND RESPONDENT DATED 14.04.2014.**

**EXHIBIT P5: COPY OF STAY APPLICATION FILED BY THE PETITIONER BEFORE
THE 2ND RESPONDENT.**

**EXHIBIT P6: COPY OF WRITTEN SUBMISSION FILED BY THE PETITIONER
BEFORE THE 2ND RESPONDENT DATED 05.10.2015.**

**EXHIBIT P7: COPY OF ORDER ISSUED BY THE 2ND RESPONDENT
DATED 09.10.2015.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.32920 OF 2015 (L)

Dated this the 29th day of October, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P7 order passed by the 2nd respondent Appellate Authority in a stay application filed along with an appeal against an assessment order for the block period 1996-97 to 2002-03. The grievance of the petitioner against Ext.P7 order is essentially that the 2nd respondent Appellate Authority did not consider the merits of the case and mechanically directed the petitioner to pay 50% of the balance outstanding amounts after taking into account the payment of Rs.14,00,000/- which had been made by the petitioner and the amount of Rs.22,55,650/- that was due to the petitioner by way of refund for the assessment year 2014-15. It is stated that insofar as the 2nd respondent had not considered the merits of the case of the petitioner, coupled with financial hardship, the said order is vitiated by a patent non-application of mind.

2. I have heard the learned counsel for the petitioner as also the learned Standing counsel for the respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar and taking note of the

plea of financial hardship urged on behalf of the petitioner, I am of the view that the interests of justice would be served by directing the petitioner to make a further payment of Rs.15,00,000/- over and in addition to the Rs.14,00,000/- that he had already paid and the amount of Rs.22,55,650/- that is admittedly due to him by way of refund. I therefore modify the direction in Ext.P7 order, to the extent of directing the petitioner to effect a payment of Rs.15,00,000/- within a period of one month from the date of receipt of a copy of this judgment as a condition for grant of stay of recovery of the balance amounts confirmed against him by the assessment order, pending disposal of the appeal by the 2nd respondent Appellate Authority. The 2nd respondent Appellate Authority shall also pass final orders in the appeal within a period of three months from the date of receipt of a copy of this judgment, after hearing the petitioner. The petitioner shall also produce a copy of the writ petition along with a copy of this judgment, before the 2nd respondent, for further action.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp/29/10/15