IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

WP(C).No. 33761 of 2015 (U)

PETITIONER :

THE KURUVAMBALAM SERVICE CO-OPERATIVE BANK LTD. F 1638,
CHEMMALASSERY P.O., MALAPPURAM,
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- 673 001.

2. THE INCOME TAX OFFICER,
WARD (4), TIRUR -676 101.

R1 & R2 BY SRI.K.M.V.PANDALAI, INCOME TAX DEPARTMENT

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 06-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

sts

WP(C).No. 33761 of 2015 (U)

APPENDIX

PETITIONER(S)' EXHIBITS

P1: **COPY OF THE ASSESSMENT ORDER DATED 7/3/2015 ISSUED BY THE 2ND RESPONDENT**

P2: **COPY OF THE APPEAL DATED 30/4/2015 FILED BEFORE THE 1ST RESPONDENT**

P3: **COPY OF THE STAY PETITION DATED 8/04/2015 FILED BEFORE THE 1ST RESPONDENT**

P4: **COPY OF THE STAY ORDER DATED 23/8/2014 ISSUED BY THIS HON'BLE COURT IN IA.NO.2573/2014 IN ITA NO.198 OF 2014.**

P5: **COPY OF THE ORDER DATED 21/9/2015 ISSUED BY THE 1ST RESPONDENT**

RESPONDENT(S)' EXHIBITS: **NIL**

/TRUE COPY/

P.A.TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 33761 of 2015
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Dated this the 6th day of November, 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.

2. 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 the entire 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 petitioner shall produce a copy of the writ petition, together with a copy of this judgment before the 1st respondent for further action.

The writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das /06.11.15