

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 7TH DAY OF DECEMBER 2015/16TH AGRAHAYANA, 1937

WP(C).No. 36377 of 2015 (V)

PETITIONER(S):

**LAXMI MEGHAN EDUCATIONAL TRUST,
SURGICARE CENTRE AND HOSPITAL, BALLA VILLAGE,
KANHANGAD,
KASARAGOD-671315 REPRESENTED BY ITS CHAIRMAN.**

**BY ADVS.SRI.P.S.SREEDHARAN PILLAI
SRI.T.K.SANDEEP
SRI.ARJUN SREEDHAR
SRI.ARUN KRISHNA DHAN**

RESPONDENT(S):

- 1. THE INCOME TAX OFFICER (EXEMPTION),
KANNUR, PIN:670 006.**
- 2. THE COMMISSIONER OF INCOME TAX (APPEALS),
AAYAKAR BHAVAN, MANANCHIRA, KOZHIKODE-673001.**

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

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 07-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: A TRUE COPY OF ASSESSMENT ORDER DATED 30.3.20145 ISSUED BY IST RESPONDENT.**
- EXHIBIT P2: A TRUE COPY OF THE DDEMAND NOTICE DATED 30.3.2015 ISSUED BY IST RESPONDENT.**
- EXHIBIT P3: A TRUE COPY OF THE APPEAL DATED 22.4.2015 FILED BEFORE THE 2ND RESPONDENT.**
- EXHIBIT P4: A TRUE COPY OF THE STAY APPLICATION DATED 22.4.2015 FILED BEFORE THE 2ND RESPONDENT.**
- EXHIBIT P5: A TRUE COPY OF THE ORDER DATED 19.10.2015 PASSED BY 2ND RESPONDENT.**
- EXHIBIT P6: THE TRUE COPY OF THE BANK ACCOUNT STATEMENT FROM 1.4.2015 TO 2.10.2015.**
- EXHIBIT P7: A TRUE COPY OF ATTACHMENT NOTICE DATED 7.10.2015 ISSUED BY DEPUTY TAHSILDAR KASARAGOD.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.36377 OF 2015 (V)

Dated this the 7th day of December, 2015

J U D G M E N T

The petitioner, who is aggrieved by Ext.P1 assessment order passed under the Income Tax Act, preferred Ext.P3 appeal and Ext.P4 stay petition before the 2nd respondent Appellate Authority. The 2nd respondent considered Ext.P3 stay application and found that the petitioner was entitled only to a conditional stay of recovery of the amounts confirmed against him by the assessment order pending disposal of the appeal, and offered the petitioner an option of paying 50% of the loan in installments. Since this proposal was not acceptable to the petitioner, the petitioner informed the Appellate authority of the same and therefore the Appellate authority proceeded to dismiss the stay petition without granting any stay. In the writ petition, Ext.P5 order of the Appellate authority is impugned.

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

On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that the issue involved in the appeal pertains to the entitlement of the petitioner for the benefit of an exemption in terms of Section 10(23C) (6) read with 10(23C) (iiiad) of the IT Act. It is the specific case of the petitioner that the total income for the previous year was less than one crore, and therefore, he would be entitled to the exemption contemplated in the aforesaid provision. Taking note of the said contention of counsel for the petitioner, and finding that the appeal against Ext.P1 assessment order is pending before the 2nd respondent, I am of the view that the interests of justice would be served by directing the 2nd respondent to consider and pass orders on Ext.P3 appeal preferred by the petitioner within a period of three months from the date of receipt of a copy of this judgment, after hearing the petitioner. I make it clear that coercive steps for recovery of amounts confirmed against the petitioner by Ext.P1 assessment order shall be kept in abeyance till such time as orders are passed by the 2nd respondent, as directed, and communicated to the petitioner, on condition that the petitioner pays 25% of the amounts confirmed against him by Ext.P1 assessment order within a period of six weeks from the date of receipt of a copy of

this judgment. The petitioner shall 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/8/12/15