IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 15TH DAY OF DECEMBER 2015/24TH AGRAHAYANA, 1937

WP(C).No. 37913 of 2015 (L)

PETITIONER :

THE KONGAD SERVICE CO-OPERATIVE BANK LTD. NO.P538,
KONGAD.P.O., PALAKKAD-678 631,
REPRESENTED BY ITS SECRETARY, SHYLA.K.

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

RESPONDENT(S):

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1. THE INCOME TAX OFFICER, WARD 1, PALAKKAD-678 001

2. THE COMMISSIONER OF INCOME TAX (APPEALS),
   3RD FLOOR, AAYAKAR BHAVAN, THRISSUR-680 001.

R1 & R2 BY SRI.P.K.R.MENON,SENIOR COUNSEL, GOI(TAXES)
ADV. SRI.JOSE JOSEPH, SC, FOR INCOME TAX

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

WP(C).NO.37913/2015

APPENDIX

PETITIONER'S EXHIBITS:

P1 COPY OF THE ASSESSMENT ORDER ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2012-13 DATED 31/03/2015

P2 COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 24/04/2015

P3 COPY OF THE STAY PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 24/04/2015

P4 COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT DATED 26/10/2015.

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. 37913 of 2015

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Dated this the 15th day of December, 2015

JUDGMENT

Against Ext.P1 assessment order for the assessment year 2012-2013 under the Income Tax Act, the petitioner had preferred Ext.P2 appeal before the 2nd respondent. Along with the appeal, the petitioner had also preferred Ext.P3 stay petition. The 2nd respondent has now passed Ext.P4 order directing the petitioner to pay 50% of the amount as a condition for the grant of stay against recovery of the balance amounts confirmed against the petitioner vide the assessment order.

2. In the writ petition, the petitioner impugns the said conditional orders of stay, inter alia, on the ground that the 2nd respondent had not exercised his discretion validly while passing the said order.

3. I have heard the learned counsel appearing for the petitioner as also the learned Government Pleader appearing for the respondents.

4. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I dispose the writ

petition with the following directions:-

(i) In Ext.P4 order, the 2nd respondent does not state reasons as to why the petitioner was required to deposit the amounts as a condition for the grant of stay. This Court has held in Archana Agencies v. Commercial Tax Officer **[2014(2) KLT 715]** that an authority considering a stay petition is bound to give reasons even while granting conditional stay.

(ii) Ext.P4 order is quashed and the 2nd respondent is directed to reconsider the matter and pass fresh orders in the stay petitions filed by the petitioner, within one month from the date of receipt of a copy of this judgment after affording an opportunity of hearing to the petitioner.

(iii) Recovery steps, initiated against the petitioner shall be kept in abeyance till such time as fresh orders are passed by the 2nd respondent, as directed above, and communicated to the petitioner.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das /15.12.15