IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 16TH DAY OF DECEMBER 2015/25TH AGRAHAYANA, 1937

WP(C).No. 38068 of 2015 (G)

PETITIONER(S):

VINU.V.CHACKO, AGED 38 YEARS,
UZHATHIL VALIAPARAMBIL, NALUKODY P.O.
CHENGANSSERY, KOTTAYAM DISTRICT.

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

RESPONDENT(S):

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1. DEPUTY COMMISSIONER OF INCOME TAX,
   CIRCLE 1, THIRUVALLA 689 101.

2. THE COMMISSIONER OF INCOME TAX (APPEALS),
   SASTRI ROAD, KOTTAYAM 686 001.

BY GOVERNMENT PLEADER SMT.LILLY K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 38068 of 2015 (G)

APPENDIX

PETITIONER(S)' EXHIBITS

P1: **COPY OF ASSESSMENT ORDER ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2012-13.**

P1(A): **COPY OF ASSESSMENT ORDER ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2013-14.**

P2: **COPY OF APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT**

P2(A): **COPY OF APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT**

P3: **COPY OF STAY PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT**

P4: **COPY OF ORDER PASSED BY THE 2ND RESPONDENT**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.38068 of 2015

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Dated this the 16th day of December 2015

JUDGMENT

The challenge in the writ petition is against Ext.P4 order of the 2nd respondent, whereby the 2nd respondent rejected a stay petition filed by the petitioner along with an appeal against the assessment orders for the assessment years 2012-2013 and 2013-14, on the ground that the 2nd 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 2nd 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 by quashing Ext.P4 order and directing the 2nd respondent to consider and pass orders on Ext.P3 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 2nd respondent as directed and communicated to the petitioner, coercive steps for recovery of amounts confirmed against the petitioner by Exts.P1 and P1(a) assessment orders, shall be kept in abeyance.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

sm/