IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6273 OF 2016
WITH
WRIT PETITION NO. 6428 OF 2016

Deshbhakta Ratnappanna Kumbhar
Panchganga Sahakari Sakhar Karkhana
Ltd. & Anr. .. Petitioner
v/s.
The Union of India & Ors. .. Respondents

Mr. L.S. Shetty a/w U.R. Naik M.M. Naik i/b L.S. Shetty and Associates for the petitioner
Mr. N.N. Singh for the respondent

CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.
DATED : 11th JULY, 2016.

P.C.

1. At the request of the Counsel, both the petitions are being disposed of at the stage of admission.

2. Both these petitions under Article 226 of the Constitution of India challenge two orders dated 6th April, 2016 passed by the Assessing Officer rejecting the application for stay in respect of the Assessment Years 2012-13 and 2013-14 respectively.

3. Both the impugned orders were passed under Section 220(6) of the Income Tax Act, 1961 (the Act). The demand issued consequent to

the assessment orders passed for the two assessment years 2012-13 and 2013-14 were stayed subject to petitioners paying 15% of the demand raised in each of the two assessment years as a condition precedent.

4. For both the Assessment Years 2012-13 and 2013-14, consequent to the passing of the assessment orders, the petitioner has filed appeals before the Commissioner of Income Tax (Appeal) [CIT(A)]. Both the appeals are pending disposal. In the meantime, the petitioners had approached the Assessing Officer to stay the demand and not treat it as an assessee in default till disposal of its appeals before the CIT(A). This stay was sought not only on the ground of financial hardship but *inter alia* on the ground that it had a strong *prima facie* case on merits, which substantially concludes the issue raised in the appeal in its favour.

5. On 6th April, 2016, the two impugned orders were passed for Assessment Years 2012-13 and 2013-14 (one each for each A.Y.) directing the petitioners to pay 15% of the demands raised for each of the two years as a condition to stay the balance amount till the disposal of the appeal of the CIT(A). The impugned orders dated 6th April, 2016 after recording the fact that the petitioners are in financial difficulty relied upon the instructions dated 29th February, 2016 issued

by the Central Board of Direct Taxes (CBDT) to direct the petitioners to deposit 15% of the amount for stay of the balance demands till its appeals for the Assessment Years 2012-13 and 2013-14 are disposed of by the CIT(A). It appears that after the passing of the order dated 6th April, 2016 (which was received by the assessee on 5th May, 2016) the petitioners had not moved any application before the Principal Commissioner of Income Tax / Commissioner of Income Tax seeking a stay of the demand by reviewing the order dated 6th April, 2016 of the Assessing Officer till the disposal of its appeals by the CIT(A). This led the Assessing Officer to issue a Notice dated 8th June, 2016 under Section 226(3) of the Act attaching the petitioners' bank account with Punjan National Bank, Ichalkaranji, Kolhapur.

6. We find that the impugned order dated 6th April, 2016 while disposing of the appeals has not followed the parameters laid down by this Court in ***KEC International Ltd. Vs. B.R. Balkrishnana & Ors. 251 ITR 158*** while considering the stay applications. This obligation of the Revenue under Section 220(6) of the Act to consider the stay applications cannot be obliterated by instructions of the CBDT. The Assessing Officer has to consider the applications for stay independently and in a fit case direct a complete stay. However, in the

peculiar facts and circumstances of the case, after 6th April, 2016 as the petitioners took no steps to have the order dated 6th April, 2016 reviewed by the Principal Commissioner of Income Tax / Commissioner of Income Tax. This tacit acceptance of the orders dated 6th April, 2016 led to the attachments of its Bank Accounts. Therefore, at this stage we do not disturb either the order dated 6th April, 2016 or the attachment notices dated 8th June, 2016.

7. However, as the terms of the instructions dated 29th February, 2016 issued by the CBDT itself provides that where a stay of demand is granted by the Assessing Officer on payment of 15% of disputed demand, the aggrieved assessee could approach the jurisdictional Principal Commissioner of Income Tax / Commissioner of Tax for a review of the decision of the Assessing Officer.

8. Therefore, in the present facts, the ends of justice would be met if the petitioner files an application with the Principal Commissioner of Income Tax / Commissioner of the Income Tax within a period of one week from today seeking a review of the order dated 6th April, 2016 passed by the Assessing Officer. Needless to state that if such an application is made for review by the petitioners, the Principal

Commissioner of Income Tax / Commissioner of Income Tax would consider and dispose it in accordance with the parameters as laid down by this Court in *KEC International Ltd. (supra)* for disposing applications for stay. Further, in case the petitioner files its applications for review of the two orders dated 6th April, 2016 before the Commissioner of Income Tax within a period of one week from today, the Officers of the Revenue will not act further upon the Notices issued under Section 226(3) of the Act to the petitioners' bankers till such time as the Commissioner of Income Tax disposes the petitioners' applications and for a further period of two weeks from the receipt of the orders of the Commissioner of Income Tax by the petitioner. However, it is made clear that though the attachment of the petitioners' Bank Accounts made by the Notices dated 8th June, 2016 would continue, the Revenue is restrained from acting further consequent to the attachment i.e. withdrawing the amounts and / or giving any further directions in respect of the frozen / attached account.

9. Both the Writ Petitions are disposed of in the above terms. No order as to costs.

(A.K. MENON, J.) **(M.S. SANKLECHA, J.)**