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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1376 OF 2016

Theobroma Foods Pvt. Ltd. ..Petitioner
Versus
The Commissioner of Income Tax-3
& Ors. ..Respondents

....
Mr. Neelabh Shreesh for the Petitioner.
Mr. Santosh Kumar a/w Ms. Samiksha Kanani for the Respondents.
....

CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.

DATE : 29TH JUNE, 2016

P.C.:

1. This Petition under Article 226 of the Constitution of India to challenges :-

(a) the communication dated 23rd September, 2015 of the Assessing Officer attaching the petitioner's bank account in Central Bank of India; and

(b) Order dated 21st April, 2016 rejecting the petitioner's application for stay of the demand. Both the aforesaid actions on the part of the Revenue are consequent to Assessment Order passed on 31st March, 2015 under Section 143(3) of the Income Tax Act, 1961 (the Act) in respect of A.Y.

2012-13.

2. On 31st March, 2015 the Assessing Officer passed an order under Section 143(3) of the Income Tax Act raising a demand of Rs.29.17 lakhs. The petitioner filed an appeal from the order dated 31st March, 2015 of the Assessing Officer to the Commissioner of Income Tax (Appeals). Thereafter the petitioner also filed an application for stay of the demand in terms of Section 220(6) of the Income Tax Act with the Assessing Officer. On 3rd August, 2015 the application for stay filed by the petitioner was rejected by the Assessing Officer. Consequent to the order dated 3rd August, 2015, the Assessing Officer issued a notice dated 23rd September, 2015 under Section 226(3) of the Act to the petitioner's bankers and attached the petitioner's funds therein. Thereafter, on 5th October, 2015 the entire amount payable by the petitioner consequent to the Assessment Order dated 31st March, 2015 was paid over by Central Bank of India to the Income Tax Department. It was only on 18th March, 2016 that the petitioner preferred an application to the Commissioner of Income Tax in his administrative capacity as the head of the department to stay of the demand with retrospective effect and a refund of the amounts in excess of 15% of disputed tax liability. This on the basis of the instruction of CBDT dated 29th February, 2016.

3. The Principal Commissioner of Income Tax by the impugned order dated 21st April, 2016 rejected the stay application as there was no outstanding demand in respect of which a stay could be granted. This is so as the entire demand which is payable in view of the order dated 31st March, 2015 of the Assessing Officer has been paid. So also the attachment of the bank account does not survive after receipt of the payment.

4. In the aforesaid facts, no fault could be found with the impugned order dated 21st April, 2016 holding that there was nothing to stay as the dues has been paid.

5. However it is made clear that dismissal of this petition would not preclude the petitioner from applying to the Commissioner of Income Tax(Appeals) for an early hearing of its pending appeal. Needless to state it would be decided by the Commissioner of Income Tax (Appeals) on the merits of the application so made.

6. The Petition is disposed of. No order as to costs.

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

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