IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1883 OF 2016
IN
INCOME TAX APPEAL NO. 330 OF 2016

Srestha Arts & Commodities Pvt. Ltd. .. Applicant

In the matter between :
Srestha Arts & Commodities Pvt. Ltd. .. Appellant
v/s.
The Director of Income Tax (OSD) .. Respondent

Mr. S. Sriram a/w Mr. Jash Sanghavi i/b PDS Legal for the applicant
Mr. Suresh Kumar a/w Ms. Samiksha Kanani for the respondent

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

DATED : 5th AUGUST, 2016.

P.C.

1. This notice of motion seeks a stay of the order dated 21st August, 2015 passed by the Income Tax Appellate Tribunal (the Tribunal) for A.Y. 2008-09. The above order dated 21st August, 2015 of the Tribunal is subject of challenge in the pending appeal under Section 260A of the Income Tax Act, 1961 (the Act).

2. The impugned order dated 21st August, 2015 of the Tribunal whilst setting aside the order of the Commissioner of Income Tax

(Appeal) restored the entire issue to the Assessing Officer to determine whether the applicant was carrying on speculative business on the test of availability of funds and delivery.

3. The petitioner's grievance is that consequent to the impugned order dated 21st April, 2015 of the Tribunal, the applicant has filed an appeal to this Court being Income Tax Appeal No.330 of 2016, which is awaiting consideration for admission. In the meantime, the Assessing Officer is seeking to complete the assessment in terms of the directions contained in the impugned order dated 21st August, 2015 by the Tribunal.

4. Mr. Sriram, learned Counsel appearing in support of the applicant submits that the impugned order of the Tribunal is not sustainable as it is in the face of Section 43(5) of the Act. In the above circumstances, he states that the applicant should not be made to attend the hearing before the Assessing Officer when the issue seems to be covered in his favour.

5. We see no reason to interfere at this stage. The impugned order of the Tribunal is already a subject matter in the appeal before us.

In any event, the orders passed consequent to the impugned order of the Tribunal would undoubtedly be subject to the outcome of this appeal, if admitted. In the above view, we see no reason to interfere of this stage and grant a stay.

6. Accordingly, the Notice of Motion is dismissed.

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