THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Writ Petition Nos.19& 20 of 2016

COMMON ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

The Assessing Authority passed an assessment order on 30.03.2015 whereby the petitioners claim for deduction under Section 80P(2) of the Income Tax Act, 1961 (for short "the Act") was disallowed, and profit from the sale of fertilisers was treated as profit derived from its sale to non-members. Aggrieved thereby, the petitioners carried the matter in appeal to the Commissioner of Income Tax (Appeals) before whom the appeals are still pending. They filed an application, under Section 220 (6) of the Act, before the Assessing Authority who, by his orders dated 14.05.2015, rejected the applications and directed the petitioners to pay the demand immediately failing which coercive steps would be taken to recover the demand. Aggrieved thereby, the petitioners filed applications before the Additional Commissioner of Income Tax on 24.05.2015 seeking stay of recovery of the tax demand pending disposal of the appeals. The Additional Commissioner, by his order dated 12.06.2015, granted stay of 50% of the demand till 31.12.2015, and permitted the petitioners to pay the remaining 50% in eight equal monthly instalments, from 05.07.2015 onwards. Aggrieved thereby, the petitioners approached the Principal Commissioner of Income Tax, Tirupati who, by his order dated 13.10.2015, directed the petitioners to pay 50% of the demand in six equal instalments starting from 20.10.2015; and observed that the remaining demand of Rs.7,48,565/- was kept in abeyance till the disposal of the appeals or 31.03.2016 whichever was earlier.

While the aforesaid orders passed by the Additional Commissioner, and the Commissioner of Income Tax were subjected to challenge in these writ petitions, the orders passed by the

Assessing Authority under Section 220(6) of the Act are now subjected to challenge pursuant to an application seeking amendment of the prayer.

While the orders of by the Additional Commissioner, and the Commissioner of Income Tax, were passed on the petitioner invoking their jurisdiction, their power to grant conditional stay, pending disposal of the appeal, is not referable to any statutory provision under the Act. It is only the order passed by the Assessing Authority on 14.05.2015 which is referable to Section 220(6) of the Act.

Sri A.V.Krishna Koundinya, learned Senior Counsel appearing on behalf of the petitioners, would rely on a Division Bench judgment of this Court in ***Commissioner of Income Tax vs. Andhra Pradesh State Co-operative Bank Limited[1],*** and refer to Circular No.18 of 2015 dated 02.11.2015 issued by the Central Board of Direct Taxes, in support of his submission that the investment made by one bank with another is a part of its business of banking; the income arising from such investment falls under the heading "profits and gains of business or profession"; as such, the assessment order is *ex facie* illegal; and the petitioners cannot be called upon to pay the entire tax pending disposal of the appeals.

Section 220(6) of the Income Tax Act stipulates that, where an assessee has presented an appeal under Section 246 or 246A, the Assessing Authority may, in his discretion and subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee as not being in default in respect of the amount in dispute in the appeal, even though the time for payment has expired, as long as such appal remains undisposed of. Notwithstanding the assessment order passed by him, Section 220(6) of the Act confers discretion on the Assessing Authority to treat the assessee as not being in default in respect of the disputed tax which is the subject matter of an appeal before the Commissioner of Income Tax (Appeals). The said provision confers power on the Assessing

Authority to impose such conditions, as he may think fit to impose in his discretion, in treating the assessee as not being in default. The power under Section 220(6) of the Act is not a power to review the assessment order passed earlier and, while exercising jurisdiction thereunder, neither can the assessing authority examine the validity of the assessment order passed by him earlier, nor can the correctness of the said order be canvassed before him. The validity of the assessment order would be subjected to examination only in the appeal filed before the Commissioner of Income Tax (Appeals).

The mere fact that the Assessing Authority believed that his order accorded with law did not justify his refusal to exercise jurisdiction under Section 220(6) of the Act. The Assessing Authority has evidently erred in rejecting the petitioners' applications filed under Section 220(6) of the Act, relying on his confidence that the appeals preferred by the petitioners, against the assessment order passed by him, would be rejected. Factors, other than the merits of the assessment orders passed by him earlier, are required to be taken into consideration by the Assessing Authority while exercising jurisdiction under Section 220(6) of the Act. As the Assessing Authority was swayed by his belief that the appeals preferred by the petitioners, against the assessment orders passed by him earlier, would be rejected (which is not among the factors on which he could have exercised his jurisdiction under Section 220(6) of the Act), the impugned orders must be, and are accordingly, set aside.

The Assessing Authority shall consider the petitioners' applications, under Section 220(6) of the Act, afresh and in accordance with law uninfluenced by the orders passed by the Additional Commissioner and the Commissioner of Income Tax, as it is not in dispute before us that the orders of the aforesaid authorities do not have statutory sanction. The writ petitions are, accordingly, disposed of.

The miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date: 28.01.2016

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<u>THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN</u>

AND

<u>THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY</u>

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[1] (2011) 336 ITR 0516