THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
and
THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

WRIT PETITION No.28972 of 2016

ORDER: **(per VRS, J)**

The petitioner has come up with this writ petition, challenging an order passed by the Assessing Officer under Section 220(6) of the Income Tax Act, rejecting the prayer for stay of further proceedings, pursuant to the order of assessment relating to the assessment year 2013-14.

2. Heard Mr. A.V. Krishna Kaundinya, learned senior counsel appearing for the petitioner, and Mr. T. Vinod Kumar, learned senior standing counsel for the Income Tax Department, appearing for the respondents.

3. The petitioner is actually a development authority constituted by the erstwhile combined State of Andhra Pradesh, in terms of Section 3 of the Andhra Pradesh Urban Areas (Development) Act, 1975. It is actually a statutory authority vested with certain powers under the aforesaid Act, for regulating the development of properties within the jurisdiction conferred upon it. Since it is a statutory authority, not transacting any business, the petitioner applied for exemption under Section 12A.

Simultaneously, the petitioner also filed return for the relevant assessment year.

4. Thereafter, the Assessing Officer passed order under Section 144 read with Section 147, for the assessment year 2013-14, demanding a total tax amount of Rs.1,07,50,83,630/-.

5. The petitioner filed statutory appeal as against the order of assessment before the Commissioner (Appeals). The appeal is now pending.

6. In the meantime, the petitioner moved application for stay under Section 220(6) of the Act before the Assessing Officer himself. By an order, dated 10.08.2016, the Assessing Officer rejected the request for stay.

7. Being a statutory authority, riddled with its own inherent drawbacks and red tapism, the petitioner started acting in different directions. It appears that they moved the Principal Commissioner of Income Tax for a temporary reprieve. They also moved the Government for sanctioning funds for at least 15% of the tax demand, since they were already running at a loss.

8. Taking advantage of the request forwarded by the petitioner to the Government to sanction funds for payment of 15% of the

tax demand, the Principal Commissioner of Income Tax appears to have passed an order, dated 10.08.2016, giving time up to 31.09.2016 to the petitioner to make payment of 15% of the tax demand. In the meantime, the petitioner has come up with the present writ petition, challenging the order of the Assessing Officer passed under Section 220(6).

9. The primary objection of the respondents/Department to the maintainability of the writ petition is that after having moved the Principal Commissioner of Income Tax and after having obtained an order in their favour granting relief partially, it was not open to the petitioner to challenge the original order of rejection passed by the Assessing Officer.

10. But, it appears from the scheme of the Income Tax Act, 1961 that the CIT (Appeals) himself does not have the power to grant stay of an order of assessment, pending a regular appeal. In contrast, the Assessing Officer himself is conferred the power under Section 220(6) to grant stay, subject to certain conditions and in his own discretion.

11. Since the CIT (Appeals) is not conferred with any power to grant stay pending a regular appeal, it is doubtful whether the Principal Commissioner of Income Tax could have the power to

grant stay or not. However, our contention is drawn by Mr. T. Vinod Kumar, learned senior standing counsel for the Income Tax Department, to Section 264(1) of the Act, which confers a power of revision upon the Commissioner, to be exercised either *suo motu* or on an application. Therefore, it is contended by the learned standing counsel for the Income Tax Department that the order of the Assessing Officer, dated 11.08.2016, impugned in the writ petition, should be taken to have been modified by the Commissioner under Section 264(1), exercising the power of revision.

12. But, we doubt the correctness of the aforesaid contention. What a regular appellate authority is not entitled to do, due to the absence of any express power conferred upon him to grant stay, we do not think that any other officer of the same rank could be construed to have. Though all the Commissioners in the hierarchy may be of the same rank, it is only some Commissioners who were vested with the powers to deal with statutory appeals. Similarly, a Commissioner is vested with the power under Section 263. Therefore, to say that the Principal Commissioner is entitled to exercise the revisional jurisdiction under Section 264(1) would be that he would be competent to do what the CIT (Appeals) himself is not competent to do.

Therefore, we are of the considered view that the objection relating to the maintainability of the writ petition, cannot be sustained.

13. Coming to the merits of the case, there is no doubt about the fact that the petitioner is a statutory authority of the State Government. They have already made an application for exemption under Section 12A. They are running at a loss, by virtue of being a non-profit organization. Unless they receive financial backup, it is impossible for them to survive. The performance of the statutory functions cannot be allowed to be jeopardized, especially when statutory first appeals are pending before the appellate authority. Therefore, a case of this nature is to be treated in a different manner, than the cases of individual or Company assesses who engage in a business venture.

14. In view of the above, the Writ Petition is allowed and the impugned order of the Assessing Officer, dated 10.08.2016, is set aside. The CIT (Appeals), before whom the appeal is pending, is directed to dispose of the statutory appeal, within a period of four (4) weeks from the date of receipt of a copy of this order. Till the disposal of the appeal, the order of assessment shall not be enforced against the petitioner.

Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J

17th OCTOBER, 2016.

U. DURGA PRASAD RAO, J

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