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

WRIT PETITION No.36059 of 2015

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

The order under challenge in this Writ Petition is the order passed by the Income Tax Officer under Section 220 (6) of the Income Tax Act, 1961 (for brevity, 'the Act') granting stay of collection of the disputed demand on condition that the petitioner pays 50% of the disputed tax in six equal monthly instalments commencing from October, 2015.

The petitioner, in whose name the subject-property stood, was subjected to tax on capital gains on the sale of the subject-immovable property. It is the petitioner's case that the property was transferred to Kukreja Trading Company Private Limited, and was used for development; the said company declared income from such development in its annual returns; it is the company which sold the property to Yalamanchili Software Exports Limited for a consideration of Rs.6,10,00,000/-; they had also paid capital gains thereon; and, consequently, the petitioner cannot be held liable to pay tax, on the very same transaction, towards capital gains.

Sri A.V.Krishna Kaundinya, learned Senior Counsel appearing on behalf of the petitioner, would submit that, even otherwise, the very fact that the Income Tax Officer did not apply his mind independently while granting stay is evident from the order itself which records that prior approval of the Commissioner was obtained as the disputed demand was in excess of Rs.1.00 Crore.

In the counter-affidavit filed on behalf of the Income Tax Officer, it is stated that the order was passed on independent application of mind exercising the discretion vested in him under

Section 220 (6) of the Act; he had, however, obtained administrative approval of the Principal Commissioner of Income Tax-I, Visakhapatnam as required under the recent instruction of the Principal Chief Commissioner of Income Tax, Andhra Pradesh & Telangana vide letter in F.No.Pr.CC/Tech/Stay/2015-16 dated 27.07.2015; under the said instructions, where the demand involved is a sum in excess of Rs.1.00 Crore, prior approval is required to be obtained from the Principal Commissioner of Income Tax before orders are passed under Section 220 (6) of the Act; he had taken a liberal view, and had only directed the petitioner to pay 50% of the disputed demand, that too in six equal monthly instalments; and the order does not suffer either from non-application of mind or abdication of the powers vested in him under Section 220 (6) of the Act.

The order under challenge in this Writ Petition, whereby stay was granted under Section 220(6) of the Act, is an elaborate order whereunder the Income Tax Officer took into consideration various aspects including the financial position of the assessee. It is not even the petitioner's case that this order was passed at the dictates of the Principal Chief Commissioner of Income Tax. The administrative circular issued by the Principal Chief Commissioner, Income Tax Department is only a check on the exercise of powers of the Income Tax Officer; and requires stay orders to be placed before the Commissioner where the disputed demand exceeds
Rs.1.00 Crore.

The impugned order is elaborate, and reflects independent exercise of the mind by the assessing authority. The mere fact that he obtained prior approval from the Commissioner, in terms of the aforesaid circular, does not result in non-application of mind or surrender of the discretion vested in him under Section 220 (6) of the Act. The very fact that the assessing officer has only directed the petitioner to pay 50% of the disputed tax, that too in six equal monthly instalments itself shows that the exercise of discretion was fair and reasonable.

Prima facie, transfer of the subject-immovable property by the petitioner to Kukreja Trading Company Private Limited, by way of a Board Resolution of the said company, is unknown to law. It is not in dispute that the subject-property stands in the name of the petitioner. It is not even the case of the petitioner that he had sold the property to Kukreja Trading Company Private Limited. The claimed transfer of ownership, by way of a Board Resolution, does not, *prima facie*, divest the petitioner's title over the property and he continues to remain its owner and, as such, is liable to pay capital gains tax. As the primary liability is that of the petitioner it is always open to the company, which is said to have paid tax, to seek refund of tax in accordance with law. That, however, does not absolve the petitioner of his liability to pay tax on capital gains on the sale of the subject property which belongs to him. The aforesaid observations reflect our *prima facie* view and the appellate authority shall consider the petitioner's contention on its merits uninfluenced by the observations made in this order.

We find no error in the order of the Income Tax Officer necessitating interference in proceedings under Article 226 of the Constitution of India. The Writ Petition fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

25th January, 2016.
Tsy