

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (T) No.66 of 2017**

Sanjay Kumar Kochhar, S/o Shri Kanhaiya Lal Kochhar, aged about 44 years, R/o Flat No.304, II Floor, Marudhar Apartment, Budhapara, Raipur, Distt. Raipur (CG).

---- Petitioner**Versus**

1. Assistant Commissioner of Income Tax, Circle 4(I), Central Revenue Building, Civil Lines, Raipur.
2. Commissioner, Income Tax (Appeals) Central Revenue Building, Civil Lines, Raipur, Distt. Raipur (CG).

---- Respondents

For Petitioner	:	Shri Neelabh Dubey, Advocate.
For respondents	:	Shri Amit Choudhary, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****13/07/2017**

1. Challenge in present writ petition is Annexure P/1 which is notice (recovery notice) issued by the respondents on 21.03.2017 which was addressed to the Managing Director of Oasis Commercial Pvt. Ltd. intimating that any amount payable to the petitioner by M/s Oasis Commercial Pvt. Ltd. may be deposited with the Income Tax Department. The said notice was issued invoking the provisions of Section 226(3) of the Income Tax Act (for short, the IT Act).
2. The contention of learned counsel appearing for the petitioner is that the petitioner basically is engaged in trading of food grains and is in the business of import and export of food grains. The income declared by the petitioner's establishment for the assessment year

2014-15 was Rs.15,07,690/-. A notice for assessment was received by the petitioner on 08.09.1994 and the assessment was completed on 30.12.2016 whereby the income tax department assessed the income of the petitioner at Rs.21,62,18,744/-. This amount is more than 133 times than the declared income which the petitioner had made initially of Rs.15,07,690/-.

3. Against this assessment, the petitioner had preferred an appeal to the Commissioner (Appeals) on 18.01.2017 under the provisions of Section 246 of the IT Act. The appeal is pending consideration till date. Meanwhile, a demand notice dated 17.02.2017 was issued to the petitioner seeking for deposit of amount assessed by the assessing officer. Immediately, the petitioner moved an application on 21.02.2017 seeking for stay of the demand notice dated 17.02.2017 under Section 220(6) of the IT Act. Pending this application under Section 220(6) of IT Act, the assessing officer has issued the impugned order (Annexure P/1) to the creditors of the petitioner namely Oasis Commercial Pvt. Ltd. on 21.03.2017 seeking for deposit of all the dues that were payable by the said company to the petitioner's establishment with the income tax department.
4. According to counsel for the petitioner, once when the application under Section 220(6) of the IT Act has been filed and which is still under consideration before the assessing officer, without deciding the said application, the respondents should not have proceeded with the recovery proceeding as the petitioner has been exercising their statutory right which is conferred upon him under the Act. It is further

submitted that the amount assessed by the assessing officer is exorbitantly high and is a highpitched assessment and therefore interim stay ought to have been granted by the assessing officer without forcing the petitioner to deposit 15 percent of the amount, otherwise required to be deposited under office memorandum dated 29.02.2016 issued by the CBDT.

5. Counsel for the petitioner refers to judgment recently passed by the Karnataka High Court in similar circumstances i.e. WPS No.1339-1342/2017 (T-IT) decided on 23.02.2017 (Flipkart India Pvt. Ltd. Vs. The Assistant Commissioner of Income Tax & Ors). Relying upon the said judgment, counsel for the petitioner has sought for indulgence of the writ court to the extent that interest of the petitioner be protected till the appeal is decided by the Commissioner (Appeals) or at least till the application for grant of stay filed by the petitioner before the assessing officer is pending consideration.
6. Learned counsel for the respondents however opposing the petition submits that this petition is premature. The petitioner's appeal as well as application are still pending consideration. Ex.R/1 is the instruction issued by the assessing officer to the extent of demanding deposit of 15 percent of the assessment made which is a pre-condition for moving an application for grant of stay. He further submits that if at all if the said application is decided against the interest of petitioner, he still has a remedy of moving to the Principal Commissioner, Income Tax against rejection of his application under Section 220(6) of the IT Act and before availing these two remedies, the petitioner has directly

rushed for invoking writ jurisdiction of this court and therefore prayed for dismissal of the writ petition.

7. Having considered the contentions put forth on either side and on perusal of records, if we peruse the circular of the respondent i.e. instruction No.1914/1993 issued by the CBDT, clause 2(B)(iii) of the said instruction clearly refers to the provision laying down the procedure for consideration of an application for grant of stay in matters relating to highpitched assessment. For ready reference clause 2(B)(iii) is reproduced herein as under:

“The decision in the matter of stay of demand should normally be taken by assessing officer/TRO and his immediate superior. A higher superior authority should interfere with the decision of the AO/TRO only in exceptional circumstances e.g. where the assessment order appears to be unreasonably highpitched or where genuine hardship is likely to be caused to the assessee.....”

8. A plain reading of aforesaid instruction makes it very clear that the assessing officer or the authorities superior to him have been granted ample powers for considering the application for stay and condition/grounds on which the stay has been sought for. A reading of provision shows that ample discretion is left for the assessing officer to consider at the time of deciding the stay application. It would be relevant at this juncture to refer to paragraph 16 of the said judgment of Karnataka High Court in case of Flipkart India Pvt .Ltd. (Supra) which reads as under :

“16. It is true that Instruction No.4(B)(b) of the Circular dated 29.02.2016, gives two instances where less than 15 percent

can be asked to be deposited. However, it is equally true that the factors, which were directed to be kept in mind both by the Assessing Officer, and by the higher superior authority, contained in Instruction No.2-B(iii) of Circular No.1914, still continue to exist. For as noted above, the said part of Circular No.1914 has been left untouched by the Circular dated 29.02.2016. Therefore, while dealing with an application filed by an assessee, both the Assessing Officer, and the Prl. CIT, are required to see if the assessee's case would fall under Instruction No.2-B(iii) of Circular No.1914, or not? Both the Assessing Officer and the Prl. CIT, are required to examine whether the assessment is “unreasonably highpitched”, or whether the demand amount “would lead to a genuine hardship being caused to the assessee” or not ?

9. Taking into consideration the view of the Karnataka High Court in the aforesaid judgment and also considering the provisions of Section 2(B)(iii) read with Section 220(6) of the IT Act, this court is of the opinion that it shall be left for the assessing officer at the first instance to decide the application for grant of stay moved by the petitioner and which is pending consideration before him including that of grant of complete stay of the execution of the recovery notice.
10. In the event if the application is decided against the interest of the petitioner, it shall be left open for the petitioner to avail the remedy available under the said circular of moving before the Principal Commissioner, Income Tax challenging the order of assessing officer made under Section 220(6) of the IT Act.
11. Needless to mention that since the said clause 2(B)(iii) empowers the authorities for grant complete waiver of the pre-deposit part, the authority concerned, pending consideration the stay application, both

at the stage of assessing officer as well as if it is moved before the Principal Commissioner, Income Tax, they shall not take any coercive steps for making the recovery.

12. Taking into consideration the entire factual matrix of the case, and with the consent of the counsel for both the parties this court is also of the view that ends of justice would meet if the appeal preferred by the petitioner itself is decided by the Commissioner (Appeals) at the earliest preferably within a period of three months.

Sd/-
(P. Sam Koshy)
Judge

inder