IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 116 OF 2017

Vedanta Ltd.
(successor of The Madras Aluminium Co. Ltd.)
Having its Registered office at
Sesa Ghor, 20 EDC Complex,
Patto, Panaji,
Goa – 403 001. … Petitioners

Versus

1. Asst. Commissioner of Income-tax
Circle 1(1), Aayakar Bhawan,
EDC Complex,
Patto, Panaji, Goa.

2. Principal Commissioner of Income-tax,
Aaykar Bhawan, EDC Complex,
Patto, Panaji, Goa, 403 001. … Respondents

Mr. Balbir Singh, Senior Advocate with Mr. R. G. Ramani and Mr. Sachit Jolly, Advocates for the Petitioners.

Ms. Susan Linhares, Advocate for the Respondents.

Coram :- **F. M. REIS,**
NUTAN D. SARDESSAI, JJ.
Date : **25th January, 2017**

ORAL JUDGMENT *(Per F. M. Reis, J.)*

Heard Mr. Balbir Singh, learned Senior Advocate appearing for the Petitioners and Ms Susan Linhares, learned Counsel appearing for the Respondents.

2. Rule. Heard forthwith with the consent of the learned Counsel. Learned Counsel appearing for the Respondents, waives service.

3. The above Petition filed under Article 226 and 227 of the Constitution of India, inter alia, prays to quash and set aside the impugned notice dated 13.01.2017 issued to the ICICI Bank under Section 226 (3) of the Income Tax Act.

4. During the course of the hearing of the above Petition, the learned Senior Advocate appearing for the Petitioners pointed out that based on the impugned notice, the account of the Petitioners has been frozen and, as such, the Petitioner is unable to carry out the statutory obligations. It is further pointed out that the claim of the Respondents for the Assessment year 2011-12 and that against the Order passed by the Assessing Officer, an Appeal is pending under CIT (A) and an interim Order staying the recovery is in operation subject to a deposit of 15% of the disputed amount. It is further pointed out that such interim Order was in operation until disposal of the Appeal or till 31.12.2016 whichever is earlier. The learned Senior Advocate further submits that the Appeal is still pending before the CIT (A) and, according to him, though the matter was posted for hearing yesterday, it was adjourned in view of the non-availability of the concerned Member. It is further submitted that as such grave prejudice would occasion to the day to day functioning of the on going business activities of the Petitioners in view of the subject notice under Section 226(3) of the Income Tax Act and, as such, as the Respondent has a substantial amount to be refunded to the Petitioners in respect of the earlier assessment years, no prejudice would

occasion to the Petitioners in case the impugned notice is quashed and set aside. Learned Senior Advocate further submits that the Petitioners are prepared to proceed with the hearing of the Appeal before the CIT(A) expeditiously and direction may be issued to decide the Appeal preferred by the Petitioners as expeditiously as possible.

5. On the other hand, Ms Linhares, learned Counsel appearing for the Respondents, upon instructions, states that the Appeal preferred by the Petitioners before the CIT (A) shall be disposed of as expeditiously as possible and in any event within four weeks from today. In such circumstances, to that extent, the grievances of the Petitioners on that count no longer survives.

6. The only aspect to be examined as such is the effect of the impugned notice issued under Section 226(3) of the Income Tax Act during the said interim period. It is not in dispute that in terms of the circular issued by CBDT, the Assesses are expected to deposit 15% of the disputed amount to obtain a stay of the recovery when an Appeal is pending before the CIT (A). In the present case, it is not in dispute that such Appeal is in fact pending in respect of the subject assessment year. But, however, the fact remains that the interim Order passed by the Assessing Officer was in operation upto 31.12.2016 and an application for extending such stay is pending consideration before the Assessing Officer. The learned Counsel for

the Respondents was unable to point out any specific reason why the Petitioners are not entitled to the extension of the stay Order which was in operation.

7. As an application is in fact pending before the Assessing Officer for extension of stay and the learned Counsel appearing for the Respondents was unable to point out any change of circumstances to modify/refuse the interim stay of recovery of the disputed amount, at this stage, we find it appropriate that until the CIT(A) disposes the Appeal, to pass the following :

O R D E R

(i) The impugned notice dated 13.01.2017 stands modified and the ICICI Bank shall permit the Petitioners to withdraw only 50% of the amount deposited in the subject account and the remaining amount shall continue to in deposit with the ICICI Bank until further directions in the CIT Appeal no. 1/Salem filed by the Petitioners for the Assessment year 2011-12

(ii) Rule is made absolute in the above terms.

(iii) Liberty to the parties to apply.

NUTAN D. SARDESSAI, J. **F. M. REIS, J.**

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