IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO.325 OF 2017.

Prateek Alloys Pvt. Ltd., Having factory at 108, Kundaim Industrial Estate, Kundaim Goa and Head Office at T-6/7, Sandeep Apartments, Dada Vaidya Road, Panaji, Goa, through its Director Mrs. Girija Agarwal, age about 45 years. ...... Petitioner.

Versus

1. Asst. Commissioner of Income Tax, Circle(1), having office at Aayakar Bhavan, Patto Plaza, EDC Complex, Panaji-Goa.

2. The Principal Commissioner of Income Tax, having office at Aayakar Bhavan, Patto Plaza, EDC Complex, Panaji-Goa.

3. The Commissioner of Income Tax(Appeals) Circle(1), having office at Aayakar Bhavan, Patto Plaza, EDC Complex, Panaji-Goa. ...... Respondents.

Shri S. R. Rivankar, Advocate for the petitioner.
Ms. S. Linhares, Advocate for the respondents.

Coram:-F. M. REIS,
NUTAN D. SARDESSAI,JJ.

Date:-6th April, 2017.

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

Heard Shri S. R. Rivankar, learned Advocate for the petitioner and Ms. S. Linhares, learned Advocate for the respondents.

2. Rule. Heard forthwith with the consent of the learned Counsels appearing for the parties.

3. The learned Advocate waive notice on behalf of the respondents.

4. The challenge in the above petition is to the demand notice dated 26.12.2016, the first impugned order dated 3.2.2017 issued by the respondent no.1 and the second impugned order dated 10.3.2017 issued by the respondent no.2.

5. Shri Rivankar, learned Counsel appearing for the petitioner points out that on 24.3.2017 the respondent no.2 has attached the account of the petitioner herein.

6. During the course of hearing of the above petition,

Shri Rivankar, learned Counsel appearing for the petitioner submits that the demand claimed by the respondent no.2 is contrary to law, as according to him, the amount received based on the Memorandum of Understanding dated 16.1.2015 is accessible in the Assessment Year 2015-16. The learned Counsel further points out that the impugned demand assessed by the Assessing Officer for the previous Assessment is contrary to law and erroneous. It is further submitted that the appeal challenging the Assessment Year is pending before the Commissioner of Income Tax (Appeals), Panaji, ("CIT(Appeals)" for short) which has not yet been disposed off. It is further pointed out that in the meanwhile the application filed by the petitioner for stay before the Commissioner has been refused unless 15% of the demand is deposited by the petitioner. It is further pointed out that the petitioner in the Assessment Year 2015-16 has already offered this income for taxation purpose and the scrutiny has not been completed. The learned Counsel further points out that this aspect has not been taken note while disposing the application for stay.

7. On the other hand, Shri S. Linhares, learned Counsel

for the respondents submits that as far as appeal before the CIT(Appeals), such appeal shall be disposed off within three months from today. The learned Counsel further points out that in terms of the circular unless 15% is deposited, the question granting any stay would not be justified.

8. We have considered the submissions of the learned Counsel and we have also gone through the records.

9. Considering that the respondents have shown their willingness to dispose off the appeal preferred by the petitioner before the CIT (Appeals) within three months, we find that, such grievance of the petitioner would no longer survive.

10. The only aspect to be examined in such circumstances is whether the impugned demand is liable to be stayed until the disposal of the appeal before the CIT (Appeals).

11. On perusal of the order dated 10.3.2017 the contentions raised on the ground that the impugned

Assessment Year itself is without any basis or jurisdiction have not been dealt with. We find that there are no prima facie consideration on these aspects in the impugned order dated 10.3.2017 while disposing off the stay application. In such circumstances, we find that the impugned order dated 10.3.2017 deserves to be quashed and set aside and the learned CIT(Appeals) be directed to decide the stay application afresh after considering all the contentions raised by the petitioner in accordance with law. But however considering the demand which is substantial such exercise can be allowed subject to the petitioner depositing before the Principal Commissioner a sum of ₹25,00,000/- (Rupees twenty five lakhs only).

12. In view of the above, we dispose off the above Writ Petition by consent, to dispose off the appeal preferred by the petitioner within three months from today. The operation of the demand by the respondent /revenue shall be stayed in the light of the observation made herein above subject to the deposit of ₹25,00,000/-(Rupees twenty five lakhs only) before the Principal Commissioner.

13. Rule is made absolute in the above terms. Petition stands disposed off accordingly.

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

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