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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11150 OF 2017**

Rajendra Vasantrao Ingole	... Petitioner
Vs.	
The Tax Recovery officer – 6, Pune	... Respondent

Mr. Veerdhaval Kakade for the Petitioner.
Mr. Sham V. Walve for the Respondent.

**CORAM : A.S. OKA &
A.K. MENON, JJ.**

DATE : 11th OCTOBER, 2017

PC.

1 Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent. On the basis of return of income filed by the petitioner for the Assessment Year 2012-13, the case of the petitioner was selected for scrutiny. An assessment order was passed on the scrutiny. The petitioner being aggrieved by the said order preferred an Appeal before the Commissioner of Income Tax (Appeals). The petitioner made an application for stay of demand and recovery proceeding to the Tax Recovery Officer – 6, Pune. By the impugned order, application was rejected by Tax Recovery Officer – VI, Pune. By the said impugned order, the petitioner was called upon to pay the amount of demand.

2 The submission of the learned counsel appearing for the petitioner is that the application for stay has been rejected without any application of mind and without going into the contentions raised by the petitioner. He would, therefore, submit that the application made by the petitioner could not have been disposed of in such a summary manner.

3 The learned counsel appearing for the respondent while supporting the impugned order has placed on record the office memorandum dated 31st July, 2017. He submitted that the petitioner can take benefit of the policy and by depositing 20% of the amount of demand, the Petition can be heard on merits.

4 The learned counsel appearing for the respondent also pointed out that in the application dated 3rd January, 2017 which is made not to the Assessing Officer but to the Tax Recovery Officer, practically no grounds are stated in support of the prayer for grant of stay.

5 After having considered the submissions and after having perused the documents, we find that application dated 3rd January, 2017 made by the petitioner is as vague as possible. The impugned

communication dated 14th August, 2017 does not contain any reason.

6 The learned counsel appearing for the petitioner states that the petitioner will make a fresh application to the Assessing Officer for grant of stay. If such a fresh application is made, the Assessing Officer may be ordered to consider the same and decide the same in a time frame.

7 The said request is reasonable which deserves to be acceded to.

8 Hence, we dispose of the Petition by passing the following order :-

ORDER

- (i) Notwithstanding the impugned communication, it will be open for the petitioner to make a fresh application for stay of demand to the Assessing Officer. Such an application shall be made within a period of three weeks from today;
- (ii) Within a period of one month from the date of receipt of the said application, the Assessing Officer shall pass appropriate order in accordance with law on the said

application;

- (iii) We make it clear that notwithstanding the impugned order, the fresh application which may be made by the petitioner shall be heard on its own merits;
- (iv) The Petition is disposed of accordingly;
- (v) All contentions on merits are kept open.

(A.K. MENON, J)

(A.S. OKA, J)