IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 1006 OF 2017

Maharashtra Industrial Development Corporation	}	**Petitioner**
versus		
Deputy Commissioner of Income Tax (Exemption) and Ors.	}	**Respondents**

WITH
WRIT PETITION (L) NO. 1007 OF 2017

Maharashtra Industrial Development Corporation	}	**Petitioner**
versus		
Commissioner of Income Tax (Exemption) and Ors.	}	**Respondents**

Mr. D. J. Khambatta – Senior Advocate with Mr. Nand Kishore, Mr. Abeczar Faizullabhoy, Mr. Amitabh Sharma, Ms.Vaidehi Naik, Mitravinda C., Mr. Firoz Mehta and Mr. Amit Jajoo i/b. M/s. Has Advocates for the petitioner in both petitions.

Mr. Nirmal C. Mohanty for respondent nos. 1 and 2 in both petitions.

CORAM :- S. C. DHARMADHIKARI & PRAKASH. D. NAIK, JJ.

DATED :- APRIL 18, 2017

P.C. :-

1. These petitions under Article 226 of the Constitution of India challenge interim orders of the Commissioner of Income

Tax (Exemptions). These orders are passed on stay applications. When these petitions were taken up by us and pursuant to the changed Assignment/Roster, we are informed by Mr. Mohanty learned counsel appearing for the respondents, on instructions, that post institution of these writ petitions, now the final orders have been passed by the first appellate authority for the assessment years 2011-12 and 2013-14. Mr. Khambatta learned senior counsel appearing for the petitioner, therefore, agreed with our suggestion that no useful purpose would be served by scrutinising the interim orders once the adjudication before the first appellate authority has reached finality. Mr.Khambatta in agreeing to our suggestion, however, expressed the apprehension that the petitioner claiming to be a statutory authority and performing a public duty, would be visited with coercive measures to recover the taxes or the demand as confirmed in the order of the first appellate authority and that would completely negate their right of further appeal to the Income Tax Appellate Tribunal.

2. Having heard both sides, we find from the statement made by Mr. Mohanty, on instructions, that an order has already been passed for these assessment years, but it has not been communicated to the petitioner. An order made and retained in

the file is no order. All the more if it is adverse, it has to be communicated. Until then, there is no question of it being acted upon. Therefore, enough time is available to the petitioners to approach the final appellate authority under the statute and once they receive a copy of the impugned order, we have no doubt in our mind that until the appeal period as envisaged by law is over, there would not be any recovery by coercive means.

3. Insofar as the assessment year 2014-15 is concerned, Mr.Mohanty stated that an order would be shortly passed by the first appellate authority. We cannot presume that it would be necessarily adverse to the interest of the petitioner and on all counts. However, once we find that the challenge is to an order which is interim in nature, but the adjudication is concluded and final order is awaited, then, it will not be proper to interfere at this stage. By clarifying and in both petitions that the views expressed by the first appellate authority are tentative and *prima facie* and shall not influence the outcome of the proceedings before either the first appellate authority or the tribunal and keeping open all contentions, these petitions are disposed of.

(PRAKASH.D.NAIK, J.) **(S.C.DHARMADHIKARI, J.)**