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

WRIT PETITION NO.1318 OF 2017

Scheme A1 of Arcil CPS 002 XI Trust .... Petitioner
Vs.
The Union of India & Others .... Respondents

Mr. Bharat Raichandani i/by UBR Legal for the Petitioner.
Mr. Suresh Kumar for the Respondents.

CORAM: S.C. DHARMADHIKARI &
SMT. VIBHA KANKANWADI, JJ.

DATE : AUGUST 07, 2017

P.C:

1. It is stated that the Assessing Officer has, relying upon a Circular, not even a Circular but an Office Memorandum of the Government of India, Ministry of Finance, Central Board of Direct Taxes, New Delhi, dated 29-2-2016, issued a direction to the following effect:-

> "2. The modified Instruction No.1914, dated 21.03.1996, vide OM bearing F No.404/72/93-ITCC, dated 29.02.2016, clearly mentions at para 4(A) that in case where the outstanding demand is disputed before

the CIT(A) the AO shall grant stay of demand till disposal of first appeal on payment of 15% of the disputed demand, unless the case falls in the category discussed in para (B).

3. As requested by you, the matter was referred to the Ld. Pr.C.I.T.-21, Mumbai for directions to recover less than 15% of the demand as per para 4(B) of the OM bearing F.No.404/72/93-ITCC, dated 29.02.2016, modifying the Instruction No.1914, dated 21.03.1996.

4. The remarks of the Pr. C.I.T.-21, Mumbai, in connection with the above, conveyed vide letter No.Pr.CIT-21/Recovery/2017-18, dated 06.04.2017 are reproduced below:

> ***"Considering the facts/issues involved in this case, the A.O. may be directed to collect 5% of the tax demand from the assessee."***

5. In view of the aforesaid discussion and directions of he Ld. Pr.CIT-21, Mumbai, you are directed to pay **at least 05% of the outstanding demand** in your case **within fifteen days from receipt of this letter** and the balance demand will be kept in abeyance till disposal of first appeal.

6. The proof of payment of the demand in part or in whole, may please be submitted within three days of making the payment. The assessee must co-operate with the CIT(A) for early disposal of the appeal.

7. The Assessing Officer reserves the right to review the stay after six months and also to recover the outstanding demand, without further notice, in case of non-compliance."

2. One of the contentions raised by Mr. Raichandani is that against the order of the Assessing Officer there is a

substantive appeal preferred by the petitioner before the Commissioner of Income Tax (Appeals) and that is pending. Today, by this direction and which the Assessing Officer has issued without even hearing the petitioner, the petitioner is called upon to deposit 15% of the demand initially and later on brought down to 5% by the Commissioner of Income Tax (Appeals). However, neither any stay application made to this Appellate Authority was heard and decided nor before the impugned direction to deposit 5% of the demand and issued allegedly by the Commissioner of Income Tax (Appeals), was the petitioner granted an opportunity of personal hearing. In the circumstances, this demand, as raised on the basis of this interim direction, seriously prejudices the petitioner. It may also affect the adjudication on merits.

3. On the other hand, relying on the Office Memorandum and the Instruction No.1914, dated 21-3-1996, Mr. Suresh Kumar would support the order and direction of the Assessing Officer.

4. After hearing both sides, we are of the view that this writ petition can be conveniently disposed of by not entering into the larger or wider controversy. We are also not going into the issue as to whether any prejudice is caused to the petitioner, particularly when the Revenue argues that the direction is to deposit now lesser amount. We are of the view that interest of justice would be served if an opportunity is given to the petitioner to seek interim stay in the pending appeal before the Commissioner of Income Tax (Appeals). Since the substantive appeal is pending and not decided as yet, we direct that if within a period of four weeks from today the petitioner files a stay application before the Commissioner of Income Tax (Appeals) and presses it, the impugned direction shall not be enforced and no sum under the same be recovered. In the event no such stay application is filed, then, the impugned direction would operate and the sum as directed thereunder can be recovered in accordance with law. This order is passed in the peculiar facts and circumstances of this case and shall not be treated as a precedent in like cases. It is only to remove the alleged prejudice

caused by not hearing the petitioner personally that we have balanced the rights and equities. The writ petition is disposed of by clarifying that there is no expression of opinion on the merits of the controversy.

(SMT. VIBHA KANKANWADI, J.) (S.C. DHARMADHIKARI, J.)