THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION No.34968 of 2016

ORDER: (Per Justice Sanjay Kumar)

This writ petition was initially filed with the following prayer:

> "For the reasons stated in the accompanying affidavit, this Honourable Court may be pleased to issue a writ of mandamus by declaring the action of respondent No.3 in issuing the impugned proceedings dated 29.09.2016 as arbitrary, illegal, unconstitutional and in violation of laws, rules, regulations, circulars & notifications relating to Income Tax and consequently direct the respondents not to take any action with respect to the Collection and Recovery of Tax under Chapter XVII of the Act pursuant to the assessment order dated 31.03.2015 while the appeal and stay application before respondent No.2 & 3 are pending and pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

Thereafter, the petitioner society amended its prayer as under:

> "For the reasons stated in the accompanying affidavit, this Honourable Court may be pleased to issue a writ, order or any direction more in the nature of writ of mandamus by declaring the action of the respondents in initiating recovery proceedings, including issuing recovery notice dated 29.09.2016 on the petitioner's bank by summarily dismissing the petitioner's application under S.220(6) of the Act, as arbitrary, illegal, unconstitutional and in violation of laws, rules, regulations, circulars & notifications relating to income tax and consequently direct the respondents not to take any action with respect to the Collection and Recovery of Tax under Chapter XVII of the Act pursuant to the assessment order dated 31.03.2015 by setting aside impugned proceedings dated 16.10.2015 and 29.09.2016, while the appeal before respondent No.2 is pending and pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

It is now stated before us that the recovery proceedings initiated under the impugned notice dated 29.09.2016 comprised two components, the demand raised by the Revenue based on the assessment and the demand raised on the strength of the penalty proceedings.

It is fairly stated by Smt. M. Kiranmayee, learned counsel for the Revenue, that in so far as the demand based on the assessment is concerned, the jurisdictional Commissioner of Income Tax (Appeals) allowed the appeal filed by the petitioner society. She would further state that the appeal filed by the petitioner society against the penalty levied under Section 271(1)(c) of the Income-tax Act, 1961, is still pending consideration before the jurisdictional appellate authority.

That being so, we are of the opinion that the impugned recovery notice dated 29.09.2016, as it stands, cannot be given effect to after the allowing of the appeal by the Commissioner in so far as the demand based on the assessment is concerned. The Revenue would necessarily have to await the result of the appeal filed by the petitioner society against the demand on the strength of the penalty proceedings and in the event cause arises, a fresh recovery notice would have to be issued. Challenge to the recovery notice dated 29.09.2016 issued by the Revenue must therefore succeed on this ground.

The writ petition is allowed to the extent indicated above.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

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SANJAY KUMAR, J

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GUDISEVA SHYAM PRASAD, J

3rd July, 2017
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