**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO.13822 OF 2017
IN
TAX APPEAL NO.5 OF 2011
WITH
INCOME TAX APPEAL NO.96 OF 2014**

Prakash s/o Girishkumar Mundada,
Age: 41 years, Occu: Business,
R/o. Plot No.M-45, MIDC Area,
Jalgaon-425 001 ..APPLICANT

VERSUS

1. The Principal Commissioner of
Income Tax-2, Kendriya Rajaswa Bhavan,
Gadkari Chowk, Old Agra Road,
Nashik-422 002

2. The Income Tax Officer,
Ward 1(3), Jalgaon ..RESPONDENTS

Mr Abhay Kolte, Advocate for applicant;
Mr Alok Sharma, Advocate for respondent No.1

**CORAM : PRASANNA B. VARALE
AND
S. M. GAVHANE, JJ.**

DATE : 27th July, 2018

ORAL ORDER:

Heard Mr Kolte, learned Counsel appearing on behalf of the applicant and Mr Sharma, learned Counsel appearing for respondent.

2. A very limited grievance is raised in the present application. It is submitted that the notice dated 1st November, 2017 is issued to the applicant by the respondents-authorities. Mr Kolte, learned Counsel for the applicant submitted that by the said notice, the applicant is directed to show cause as to why an order u/s 279(1) of the I.T. Act, 1961 should not be passed.

3. Mr Kolte, learned Counsel then submitted that the statutory appeal is preferred by the applicant - appellant in this Court against the order dated 16th June, 2010, passed by the Income Tax Appellate Tribunal, Pune, in appeal ITA No. 13333/PN/2008 200, for assessment year 2005-2006. It was further submitted by learned Counsel that on 17th November, 2017, the Division Bench of this Court on the present application, while adjourning the matter at the request of learned Counsel appearing for respondent No.2, directed the authorities not to initiate the prosecution against the applicant. He then submitted that the Division Bench specifically observed that the order is restricted to restraining the respondent from lodging any prosecution and the notice dated 1st November, 2017 directs that if the applicant fails to show cause, the action would be initiated under Section 279(1) of the Income Tax Act, 1961 and this action would be a prosecution, being lodged against him. The submission is, as the matter is pending before this Court on its merit and by way of interim order, this Court directed the authorities to stay their hands from initiation of the prosecution, the authorities ought not to have issued the notice to the applicant.

4. Mr Sharma, learned Counsel appearing for respondent No.1 had sought time on the earlier date. He, on instructions, makes a statement before this Court that the authorities would not act upon the notice dated 1st November, 2017 and would wait for decision of this Court in the appeal.

5. In view of the statement of Mr Sharma, learned Counsel for respondent-authority, nothing survives in the application. As such, the civil application is accordingly disposed of.

(S. M. GAVHANE, J,) **(PRASANNA B. VARALE, J.)**

sjk