IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.689 OF 2018

Brian Dwight Gaffino … Petitioner

Versus

Income Tax Officer & Ors. …. Respondents

Mr. S.R. Rivankar and Mr. A. Kakodkar, Advocates for the Petitioner.

Ms. A. Razaq, Standing Counsel for the Respondent No.3.

Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.

Date : 30 October 2018.

P.C. :

The Petitioner has challenged the orders passed by the Income Tax Officer and the Principal Commissioner of Income Tax in respect of the stay of demand for the Assessment Year 2010-11. By the order dated 21 February 2018, the Income Tax Officer rejected the application made by the Petitioner for stay of demand and the Petitioner was directed to be deemed to be in default to the extent of tax demand. The petition filed before the Commissioner of Income

Tax was rejected by order dated 29 May 2018.

2. The learned counsel for the Petitioner has drawn our attention to the judgment in the case of *KEC International Ltd. Vs B. R. Balakrishnan*[1]. In the said judgment the Division Bench has laid down certain parameters for considering the stay application preferred by the Assessee. It is the contention of the Petitioner that while passing the impugned orders these parameters are not kept in mind and therefore, the impugned orders will have to be set aside and therefore the exercise would have to be kept in mind indicated in *KEC International Ltd.* Nothing is shown on behalf of the Respondent as to why this course of action should not be followed. Reply affidavit is not filed.

3. In the decision of *KEC International Ltd.*, while setting aside the orders passed in respect of the stay of demand, the Division Bench had observed that in large number of matters the Court has found that such orders have been passed perfunctory by the Department only with an idea for recovery before date and without proper reasons. In view of the same, the Division Bench laid down certain parameters for dismissal which parameters reads thus:

1 [2001]251 ITR 158 (Bombay)

"(a) While considering the stay application, the authority concerned will at least briefly set out the case of the assessee.

(b) In cases where the assessed income under the impugned order far exceeds returned income, the authority will consider whether the assessee has made out a case for unconditional stay. If not, whether looking to the questions involved in appeal, a part of the amount should be ordered to be deposited for which purpose, some short prima facie reasons could be given by the authority in its order.

(c) In cases where the assessee relies upon financial difficulties, the authority concerned can briefly indicate whether the assessee is financially sound and viable to deposit the amount if the authority wants the assessee to so deposit.

(d) The authority concerned will also examine whether the time to prefer an appeal has expired. Generally, coercive measures may not be adopted during the period provided by the statute to go in appeal. However, if the authority concerned comes to the conclusion that the assessee is likely to defeat the demand, it may take recourse to coercive action for which brief reasons may be indicated in the order, and

(e) We clarify that if the authority concerned complies with the above parameters while passing orders on the stay application, then the authorities on the administrative side of the Department like respondent No. 2 herein need not once again give reasoned order."

In our opinion the present case squarely falls within the ambit of law laid down in the *KEC International Ltd.*

4. In these circumstances, the impugned orders will have to be set aside and accordingly set aside. The proceedings stand restored before the Income Tax Officer, who will decide the application in the light of the above parameters which we have culled out. Needless to state that since we have set aside the orders, no coercive steps be taken against the Petitioner pending the adjudication.

5. The writ petition is disposed of in above terms.

Prithviraj K. Chavan, J. ***N.M. Jamdar, J.***