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

WRIT PETITION NO. 778 OF 2018
WITH
WRIT PETITION NO. 780 OF 2018
WITH
WRIT PETITION NO. 852 OF 2018
WITH
WRIT PETITION NO. 854 OF 2018

Mumbai Educational Trust .. Petitioner

v/s.

Dy. Commissioner of Income Tax(Exemption)
2(1) & Ors. ..Respondents

Mr. Neha Paranjpe i/b K. Gopal for the petitioner
Mr. N.C. Mohanty for the respondent

CORAM : M.S. SANKLECHA &
SANDEEP K. SHINDE, J.J.

DATED : 8th JUNE, 2018.

P.C.

1. Head. By consent of the parties, the petitions are taken up for final disposal.

2. These four petitions under Article 226 of the Constitution of India challenge the order dated 12th December, 2017 passed by the Commissioner of Income Tax (Exemption). By the common impugned order dated 12th December, 2017, the petitioner's application for stay of

demand pending the disposal of its appeal by the Commissioner of Income Tax (Appeals) for Assessment Years 2008-09, 2009-10, 2010-11, 2011-12, 2013-14 and 2014-15 was only partially allowed. Out of a total outstanding demand of Rs.52.76 crores, the petitioner was directed to pay Rs.9 crores in terms of an installment plan submitted by the petitioner and taking into account the guidelines being Instructions No.1914 of the Central Board of Direct Taxes, requiring deposit of 20% of the demand

3. The petitioner had originally filed six petitions. However, the petitions relating to Assessment Years 2013-14 and 2014-15 have already been withdrawn by the petitioners as the demands consequent to orders under Section 143(3) of the Act in respect of two assessment years have been rectified by the Assessing Officer leading to NIL demand.

4. However, it is an undisputed position before us that after the impugned order dated 12th December, 2017 was passed under Section 143(3) of the Act, the Assessing Officer has rectified the assessment orders for Assessment Years 2008-09, 2009-10, 2010-11 and 2011-12. This has resulted in the demand being reduced in the aggregate to

Rs.33.16 crores and not Rs.52.76 crores. Besides, the reliance by impugned order dated 12th December, 2017 upon an installment plan said to have been submitted by the petitioner for working out the installment as directed therein is not correctly recorded. The petitioner has infact filed an affidavit dated 27th April, 2018 of Mr. Yogesh Joijode, Chartered Accountant stating that he represented the petitioner at the hearing before the Commissioner and no such installment plan was submitted. This fact on affidavit is not being disputed by the Revenue.

5. In the above view, it would be appropriate to set aside the impugned order dated 12th December, 2017 and restore the petitioners' application for stay to the Commissioner of Income Tax (Exemption) for fresh consideration and disposal in accordance with law.

6. Accordingly, all the four petitions are allowed in above terms.

(SANDEEP K. SHINDE J.) **(M.S. SANKLECHA, J.)**