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

WRIT PETITION NO. 899 OF 2018

Bimal Pala .. Petitioner
(LR of Late Smt. Ranjana Pala)

v/s.

The Asstt. Commissioner of Income Tax,
26(1), Mumbai & Ors. ..Respondents

Mr. Nitesh Joshi i/b Mr. Atul Jasani for the petitioner
Mr. A.R. Malhotra a/w Mr. N.A. Kazi for the respondent

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

DATED : 14th JUNE, 2018.

P.C.

1. This petition under Article 226 of the Constitution of India seeks: (a) stay of the demand of tax and penalty aggregating to Rs.1857 lakhs for the Assessment Years 1996-97, 1997-98, 1998-99, 2006-07 and 2007-08 in respect of its pending appeals before the Commissioner of Income Tax (Appeals) [CIT(A)] till its disposal; and

(b) the order dated 3rd November, 2017 passed by the respondent no.2 Tax Recovery Officer attaching the petitioner's immovable property situated in Mumbai be set aside.

2. We are informed that the petitioner's application for stay of the demand of tax and penalty consequent to the orders of respondent no.1 (Assessing Officer) pending disposal by the CIT(A) in appeal, is awaiting disposal with the Principal Commissioner of Income Tax. However, in view of this petition pending, the Principal Commissioner of Income Tax has not taken up above applications for stay filed by the petitioner for Assessment Years 1996-97, 1997-98, 1998-99, 2006-07 and 2007-08 (quantum and penalty both). We are informed that the petitioner's appeals from the assessment orders for the above years have already been taken up for hearing by the CIT(A) on 11th June, 2018.

3. Mr. Joshi, learned Counsel appearing in support of the petition states that as the hearing of the appeals have already commenced before the CIT(A), it would be appropriate that the demands be stayed till the disposal of the appeals filed by the petitioner. Mr. Joshi further submits that the Revenue would be secured by the attachment of the immovable property by order dated 3rd November, 2017 being continued till the result of the appeals by the CIT(A). Mr. Joshi, on instructions further states that the petitioner would co-operate with the CIT(A) for an early disposal of the quantum appeals of which hearing

has already been commenced. In the above behalf, on instructions from Mr. H.H. Parmar, Chartered Accountant, Mr. Joshi states that no adjournment would be sought for by the petitioner before the CIT(A) in respect of the hearing of the appeals.

4. Mr. Malhotra, learned Counsel appearing on behalf of the Revenue, on instructions from Mr. B.D. Aditya, ACIT, Circle 26(1) states that in view of the fact that the hearing of the appeals in quantum proceedings has already commenced, the respondent Revenue will not take any coercive steps to recover the dues for the subject assessment years till such time as the CIT(A) disposes of the petitioner's quantum appeals. However, to secure its due, the attachment of the immovable property at Bombay made by order dated 3rd November, 2017 will continue till the disposal of the petitioner's appeals before the CIT(A) in quantum and penalty proceedings.

5. In view of the broad consensus reached between the parties that the respondent Revenue will not initiate any further coercive proceedings for recovery of its due for the subject years and the petitioner conceding that the order of attachment dated 3rd November, 2017 of the immovable property at Mumbai would continue

undisturbed in favour of the Revenue till disposal of the appeals by the CIT(A), the dispute is narrowed down for the purposes of this petition. This consensus between the parties has been arrived at on the arrurance of the petitioner that petitioner will co-operate in early disposal of the appeals and take no adjournments. Therefore, it is made clear that in case the petitioner does not co-operate in the early disposal of the appeals by the CIT(A) and seek adjournments [save some exceptional cause to the satisfaction of the CIT(A)], it would be open to the Revenue to commence the recovery proceedings including sale of the attached property in accordance with law. The aforesaid directions would be in operation till such time as the CIT(A) passes an order on the five quantum appeals of which the hearing has already commenced.

6. So far as the penalty proceedings are concerned, the same would depend upon the result of the appeals in quantum proceedings. The recovery of the penalties imposed, would be commenced only after orders are passed thereon. However, the same is subject to the condition that the petitioner would co-operate with the disposal of the penalty appeals proceedings by the CIT(A). Mr. Joshi, on instructions, states that no adjournment would be taken by the petitioner in its

pending peanlty appeals before the CIT(A) [save some exceptional cause to the satisfaction of the CIT(A)].

7. However, it is made clear that mere pendency of the appeal in the penalty proceedings would not prevent the Revenue from adopting proceedings to recover its dues in the quantum proceedings, if orders thereon in the appeals are passed by the CIT(A) in favour of the Revenue. This would also include the recovery by sale of the attached property by order dated 3rd November, 2017 of respondent no.2 i.e. Tax Recovery Officer, in accordance with law.

8. The petition is disposed of in above terms. No order as to costs.

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