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

WRIT PETITION NO. 964 OF 2018

Maharashtra State Road
Transport Corporation ...Petitioner
V/s.
The Commissioner of Income
Tax (Exemptions) and 2 Ors. ...Respondents

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Mr. Riyaz Padvekar a/w. Mr. Girish Dave a/w. Mr. Mandar Vaidya a/w. Mr. Tanzil Padvekar i/by. Dave & Padvekar Associates, Advocate for the petitioner.

Mr. N.C. Mohanty, Advocate for the respondents.

CORAM :- M.S. SANKLECHA, &

SANDEEP K. SHINDE, JJ.

DATE :- 28TH MARCH, 2018.

P.C. :-

1. By consent the petition is taken up for hearing and disposed of finally.

2. This petition under Article 226 of the Constitution of India challenges an order dated 16th March, 2018 passed by the Commissioner of Income-Tax

(Exemption). The impugned order dated 16th March, 2018 seeks to review the stay of demands granted for the Assessment Years 2009-10, 2010-11, 2011-12 and 2013-14 by orders dated 11th March, 2016 and 18th October, 2016 on deposit of Rs.1 crores for each of the assessment years till the final disposal of the Appeals in respect of the four assessment years from the orders of assessment pending before the Commissioner of Income-Tax (Appeals).

3. By impugned order, the petitioner has been directed to deposit 20% of the demand for each of the four assessment years, failing which the Revenue has threatened to adopt coercive proceedings. The impugned order was passed varying the orders dated 11th March, 2016 and 18th October, 2016 in exercise of powers under Section 220(6) of the Income-Tax Act, 1961 (the Act) in respect of the appeals pending from the orders of assessment for the four assessment years.

4. We are informed that the appeals of the

petitioners for the four assessment years i.e. 2009-10, 2010-11, 2011-12 and 2013-14 have been finally heard and was concluded on 14th February, 2018.

5. In the above view, it is also to be noted that there is no condition of pre-deposit under the Act for the Appeal to be heard by the Commissioner of Income-Tax (Appeals). In these circumstances, as the Appeal has already been heard and orders are awaited, it would be appropriate that the Revenue now awaits the decision of the Commissioner of Income-Tax (Appeals) for seeking to recover any demands payable by the petitioner for the Assessment Years 2009-10, 2010-11, 2011-12 and 2013-14.

6. Mr. Mohanty, the Learned Counsel for the Revenue submits that the impugned order dated 16th March, 2018 seeking to review the earlier order of stay dated 11th March, 2016 and 18th March, 2016 is not without jurisdiction. The review was triggered by the fact that on identical issue for the Assessment Year 2012-13,

the Commissioner of Income Tax (Appeals) has decided on 21st June, 2017 the issue which is today in appeal in favour of the Revenue.

7. There can be no dispute that an order on stay under Section 220(6) of the Act is always subject to variation in case of change in facts and/or in law. In this case, the reliance by the Revenue on the order dated 21st June, 2017 for Assessment Year 2012-13, in the context of the hearing already being concluded for the subject Assessment Years is not justified. Moreover, the issue does not seem to be concluded. The very fact that the Commissioner of Income-Tax (Appeals) has heard the petitioners in respect of the appeals for the assessment years and has still not taken a final decision, would itself *prima-facie* indicate that the Commissioner of Income-Tax (Appeals) is considering whether or not to follow the order dated 21st June, 2017 passed in respect of the Assessment Year 2012-13 by him on which the Revenue places reliance for justifying the impugned order dated

16th March, 2018.

8. In the above view, the petition is allowed and the impugned order dated 16th March, 2018 of the Commissioner of Income-Tax is quashed and set aside. No order as to costs.

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