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

WRIT PETITION NO. 2975 OF 2017

M/s. Liberal Realtors LLP, Mumbai … Petitioner
Versus
The Income Tax Officer 32(2) -1 & Ors. …Respondents

Mr. Subramanian, with Mr. V.S. Hadade for the Petitioner.
Mr. A.R.Malhotra, for the Respondents.

CORAM: M.S.SANKLECHA &
RIYAZ I. CHAGLA, JJ.
DATED: 15TH FEBRUARY 2018

PC:-

1. This Petition challenges the orders dated 18th May 2017 passed by the Commissioner of Income Tax and the consequent recovery notice dated 21st September 2017 and 26th September 2017 issued by the officers of the Revenue.

2. By the impugned order dated 18 May 2017 the Petitioner applied for stay of the demand pursuant to the Assessment Order dated 20 March 2017 till disposal of its appeal by the Commissioner of Income Tax (Appeals) (CIT(A). Briefly the facts leading to this Petition is that on 20th March 2017, the Assessing Officer passed an Assessment Order under Section 143(3) of the Income Tax Act, 1961 (the Act) relating to Assessment Year 2015-

16. In the above assessment order, the Petitioner's income was determined at Rs.71.63 Crores.

3. Being aggrieved with the order order dated 20th March 2017, the Petitioner filed an Appeal on 15th April 2017 to CIT (A). Thereafter on 5th May 2017, the Petitioner filed an application to the Assessing Officer – Respondent No.2 seeking a stay of the recovery of the demand till the disposal of the appeal of the CIT(A) from an Assessment Order in terms of Section 220(6) of the Act.

4. In view of its financial difficulty the Petitioner paid 15% of the disputed demand of Rs.71.63 Crores in installment in accordance with the CBDT circular dated 29th February 2016. In the meantime, by order dated 18th May 2017, Respondent No.1 i.e. Commissioner of Income Tax directed the Petitioner to pay additional 15% of the disputed demand. Thus the Petitioner was directed to pay an amount of 30% of the disputed demand. This was in accordance with the powers given to the Commissioner under the Circular dated 29th February 2016 to enhance or reduce the deposit of 15% of the disputed demand as required in terms of the above Circular.

5. We are informed that the Petitioners application dated 25th September 2017 for early hearing of the Appeal was granted by the CIT (A). Further the hearing of the Petitioner's Appeal from the assessment order dated 20th March 2017 has also commenced on 22 September 2017, when written submissions were filed.

6. In the above facts as the hearing has already commenced before the CIT(A), we enquired of Mr. Malhotra whether in the peculiar circumstances of this case viz. hearing already commenced, would the Revenue not proceed to recover the balance 15% of the demand as directed by the order of the CIT(A) dated 18th May 2017 till the CIT(A) disposes of the Petitioner's appeal.

7. Mr. Malhotra, the learned counsel for the Revenue on instructions states that the Revenue will not take coercive proceedings till the Petitioner's Appeal from the order dated 20th March 2017 is disposed of by the CIT(A).

8. It is made clear that in the peculiar facts of the case we have not examined the merits of the Petitioners challenge to the

impugned order dated 18th May 2017 and the recovery notice dated 21st September 2017 and 26th September 2017.

9. Mr. Subramanian, the learned counsel for the Petitioner on instructions states that the Petitioner would fully cooperate for an early disposal of the appeal by the CIT(A). In support of the above, it is stated that the Petitioner will not seek any adjournment and would attend the hearing on the dates, if any, fixed by the CIT(A) in the pending appeal.

10. The Petition is disposed of in the above terms. No order as to costs.

(RIYAZ I. CHAGLA J.) **(M.S.SANKLECHA, J.)**