IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
56 WRIT PETITION NO.13233 OF 2018

MASCOT CONSTRUTION CO PARTNERSHIP FIRM THROUGH ITS MANAGING PARTNER ..PETITIONER

VERSUS

PR COMMISSIOENR OF INCOME TAX 2 AND OTHERS ..RESPONDENTS

…

Mr. Raviraj R. Chandak, Advocate for the Petitioner.
Mrs. Kalpalata Bharaswadkar Patil and Mr. A. R. Kale, Advocate for Respondents No.1.

…

CORAM : S. V. GANGAPURWALA &
A. M. DHAVALE, JJ.
DATED : 10th APRIL, 2019.

PER COURT:-

1. Heard learned counsel for the petitioner and respondents.

2. The petitioner assails the order rejecting the application for stay, so also the order passed in review on the application for stay.

3. The learned counsel for the petitioner submits that the authority has proceeded on the premise that in view of CBDT guidelines bearing instruction no.1914, (office memorandum dated 31.07.2017) the stay cannot be granted without the assessee depositing 20% of the tax demanded. The assessee has to deposit 20% of the tax demanded as pre-condition for grant of stay. According to the learned counsel the CBDT circular cannot restrict the discretionary powers of the authority. The

learned counsel relies on the judgment of the Apex Court in case of the **Principal Commissioner of Income Tax and Ors. Vs. LG Electronics India (P) Ltd.** dated 20.07.2018 and the order of the Delhi High Court in case of **LG Electronics India (P) Ltd. Vs. Principal Commissioner of Income Tax and Ors.** reported in **(2018) 168 DTR (Del) 354.** According to the learned counsel the case put forth by the petitioner has not been considered.

4. Mrs. Bharaswadkar Patil, learned counsel for the respondent submits that the authority has considered the case put forth by the petitioner and it is not only on the basis of CBDT circular the order has been passed. It has been considered that the petitioner had made a declaration during the survey. It cannot be said that the authority while passing the impugned order has not considered the case put forth by the petitioner.

5. The Apex Court in a case of **Principal Commissioner of Income Tax and Ors. Vs. LG Electronics India (P) Ltd.** (supra) has observed that the administrative circular does not operate as fetter on the powers of CIT since it is a quasi-judicial authority. The Apex Court has clarified that in all cases like the present case, it will be open to the authorities, on the facts of individual cases, to grant deposit orders of lesser amount than 20 per cent, pending appeal.

6. The general direction appears to have been given by the Apex Court in the said judgment.

7. The authority in the impugned order observes that the office memorandum has streamlined the procedure for considering stay petition and it lays down payment of 20% of tax demand as pre-condition for grant of stay on demand. One rider was attached in the order that in view of nature of addition resulting in the disputed demand is such that payment of a lump sum amount lower than 20% is not warranted.

8. The order passed in review reiterates the same. It is further observed in said order that the assessee himself voluntarily disclosed certain amount of income over and above the regular income during the course of survey proceedings. The case of the petitioner appears to be that the same has been retracted. The said aspect has not been considered by the authority.

9. It is discretion of the authority to direct payment of particular percentage of the amount as a pre-condition for stay. However while considering the stay petition the prima facie case put forth by the parties is required to be considered. The authority has to deal with the contentions raised by the parties so as to disclose the application of mind by the authority to the contention put forth by the parties. Reasons are required to be given. Reasons now are considered

to be one of the pillar of the principles of natural justice.

10. We do not find that the case put forth by the petitioner has been dealt with while passing impugned order so as to substantiate the discretion exercised by him. If after considering the case put forth by the petitioner, the authority may come to the conclusion about the quantum of the amount the petitioner is required to deposit as a pre-condition for stay.

11. In light of the above, the impugned orders are quashed and set aside. The authority shall consider the stay application filed by the petitioner on its own merits and take decision prima facie meeting out the case put forth by the petitioner. The petitioner shall appear before the authority on 15.04.2019 and shall cooperate in expeditious disposal of the said petition.

12. Writ Petition accordingly disposed of. No costs.

(A. M. DHAVALE)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/April-19