IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.

WRIT PETITION NO. 11289 OF 2018

Shri. Shivkant S/o. Nagappa Lasune .... Petitioner

Versus

Income Tax Officer, Ward-3,
Latur, Dist. Latur & Ors. .... Respondents

AND
WRIT PETITION NO. 11290 OF 2018

Shri. Machindra Nagorao Gayakwad .... Petitioner

Versus

Income Tax Officer, Ward-4,
Latur, Dist. Latur & Ors. .... Respondents

AND
WRIT PETITION NO. 11291 OF 2018

Shri. Gangadhar Vishwanath Yegade .... Petitioner

Versus

Income Tax Officer, Ward-4,
Latur, Dist. Latur & Ors. .... Respondents

AND
WRIT PETITION NO. 11292 OF 2018

Shri. Jaker Mir Sayyad .... Petitioner

Versus

Income Tax Officer, Ward-3,
Latur, Dist. Latur & Ors. .... Respondents

AND
WRIT PETITION NO. 11293 OF 2018

Mazidalikhan Mohammadalikhan Lashkari .... Petitioner

Versus

Income Tax Officer, Ward-3,
Latur, Dist. Latur & Ors. .... Respondents

AND
WRIT PETITION NO. 11294 OF 2018

Nasratalikhan Ishratalikhan Lashkari
h/f of Khamrunissabegam Ishratalikhan Lashkari .... Petitioner

Versus

Income Tax Officer, Ward-3,
Latur, Dist. Latur & Ors. .... Respondents

....
In all matters:
Shri. M. K. Kulkarni, Shri. Raviraj R. Chandak & Shri. P. P. Kulkarni,
Advocates for the petitioner
Smt. Kalpalata Patil-Bharaswadkar, Advocate for respdts No. 1 to 3
....

CORAM : S. V. GANGAPURWALA &
A. M. DHAVALE, JJ.

DATE : 12TH FEBRUARY, 2019

ORAL ORDER:

1. The petitioners have approached this Court challenging the order dt. 02.04.2018 passed by the respondent No. 2/Commissioner of Income Tax, rejecting the stay application.

2. The petitioners have filed appeal before the Commissioner of Appeals against the order of Assessing Officer. There is a delay in filing the appeal. The petitioners have filed application for condonation of delay. Along with the said application, they have also filed an application for stay of the order of Assessing Officer. The application for stay is rejected.

3. The learned advocate for the petitioners strenuously contends that, in view of Section 10(37) of the Income Tax Act, any income on agricultural land is exempted. The interest awarded u/s 28 and 34 of the Land Acquisition Act, 1894 is also exempted. According to the learned counsel, the impugned order does not take into consideration the provisions as applicable and as such is bad in law.

4. Smt. Kalpalata Patil - Bharaswadkar, learned counsel for respondents submits that, the petitioners have not shown any *bona fides* and the Assessing Officer has rightly computed the income.

5. As substantive appeal is already filed by the petitioners, we are not inclined to consider the arguments on merits of the appeals as the same would be preempting the decision in the appeals. It

appears that, there is delay in filing the appeals. The petitioners are agriculturists as contended by the petitioners. Taking into consideration the fact that the petitioners are agriculturists and also the aspect that the monetary claims are involved, we pass the following equitable order.

<u>ORDER</u>

The impugned order dt. 02.04.2018 passed by respondent No. 2 on stay application is set aside on condition that the petitioners deposit 25% of the amount as assessed by the Assessing Officer before the Commissioner of Appeals within a period of six weeks from today. On deposit of the amount, the bank accounts of the petitioners shall be released from attachment. The Commissioner of Appeal shall endeavour to decide the application for condonation of delay and depending upon the order passed in application for condonation of delay, the appeals, expeditiously. The parties shall appear before the Commissioner of Appeal on 04.03.2019. The Commissioner of Appeal shall thereafter decide the application for condonation of delay within a period of three months from the date of appearance of the petitioner and depending upon the order passed in the application for condonation of delay, the appeals also, expeditiously.

6. The Writ Petitions stand disposed of. No costs.

[A. M. DHAVALE]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

Punde