IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO. 14612 OF 2018

Sinhgad Technical Education Society, Pune .. Petitioner.
v/s.
Deputy Commissioner of Income Tax
Central Circle 2(2), Pune & Another .. Respondents.

Mr. Rafique Dada, Sr. Advocate with Mr. V. P. Sawant and Mr. Niraj Sheth i/b. Mr. Nitin Dhumal, for the Petitioner.
Mr. Sham Walve, for Respondent No.1.

CORAM: AKIL KURESHI &
M.S.SANKLECHA, JJ.
DATE : 16th JANUARY, 2019.

P.C:-

Heard learned Counsel for the parties for final disposal of the Petition.

2 This Petition has chequered history. We may record the brief back-ground.

3 Petitioner is a trust, running several educational institutions and hospitals. The Income Tax Authorities had raised sizeable tax demand against the Petitioner-Trust in relation to the Assessment for the Assessment Years 2009-10 to 2014-15. Petitioner-Trust has filed Appeals before the Income Tax Appellate Tribunal (for short “the Tribunal”), Pune

against such Assessment and Appellate Orders. Pending such Appeals, Petitioner had also prayed for interim injunction against the recovery of the unpaid tax and interests before the Tribunal. Tribunal passed a detailed order on 10th November, 2017 and granted conditional stay against the recoveries. Operative part of the said order reads as under:-

> *" In the totality of the above said facts and circumstances, we are of the view that the applicant has prima facie case and balance of convenience for granting only partial stay of recovery of outstanding demand. We therefore, grant the stay of outstanding tax demand subject to the following conditions:-*
>
> *(a) The applicant is directed to deposit Rs.18 crore in three installments i.e. Rs.6 crores by 30.11.2017, Rs.6 croes by 30.12.2017 and Rs.6 crores by 15.01.2018.*
> *(b) The applicant shall furnish the proof of payment of taxes on payment to the Registry.*
> *(c) In case he fails to deposit the taxes as stated in (a) above, then the case would come for hearing in normal course and not be considered as stay granted matter.*
> *(d) That out of turn hearing is granted on 18.01.2018 subject to payment of Rs.18 crores; no separate notice of hearing would be issued by the Registry.*
> *(e) That the applicant shall not seek frivolous adjournments. If Paper Book is desired to be filed by the applicant, then the same should be submitted well in advance as prescribed in ITAT Rules.*
> *(f) In case of breach of any of the above conditions, the stay granted shall automatically get vacated and matter would be heard in ordinary course.*
>
> *Subject to the fulfillment of the above conditions, the balance outstanding demand is stayed for a period of 180 days from the date of this order or till disposal of the appeal, whichever is earlier.*
>
> *In the result, all the stay, applications filed by the applicant are allowed as indicated above."*

4 Petitioner-Trust challenged the said conditional order of the Tribunal before the High Court, by filing Writ Petition No. 13099 of 2017. In the said Petition, this Court noticed a mis-representation of the Court's order by the President of the Petitioner-Trust and in connivance with the Income Tax Officer, the Trust had withdrawn sizeable amount from its bank accounts. The Division Bench of this Court, therefore, passed a detailed order on 5th January, 2018 dismissed the Petition on ground of such mis-demeanor. The Court also initiated *suo moto* contempt proceedings against the President of the Petitioner-Trust and the concerned employee of the Income Tax Department. This Contempt Petition later on resulted into imposition of jail term against the contemptnors which was also confirmed by the Supreme Court.

5 Subsequent to these developments, Tribunal passed an order on 18th December, 2018 in the pending Appeals of the Petitioner-Trust. The Petitioner-Trust had got no relief against conditions imposed by the Tribunal under order dated 10th November, 2017 to enjoy protection against the recoveries of the unpaid tax and interest, nor fulfilled such conditions. The Tribunal, therefore, by its order on 18th December, 2018 dismissed the fresh stay applications filed by the Petitioner-Trust. This, order of the Tribunal passed on 18th December, 2018, Petitioner-Trust has challenged in the present Writ Petition. In the meantime, the Department has attached the Petitioner's bank accounts. The Petitioner prays for removing such attachments.

6 At the out set, Mr. Dada, learned Senior Counsel for the Petitioner-Trust states that, Petitioner-Trust does not desire that the condition of the Petitioner-Trust depositing an amount of Rs.18 Crores

with the Income Tax Department, originally imposed in the order dated 10th November, 2017 be, in any manner, modified by reducing the condition. He, further submitted that since Petitioner-Trust failed to get any modification of this order and also did not fulfill the conditions, the Department now seeks recovery of the entire tax dues which is in the vicinity of Rs.142 Crores with interest. He submitted that, even the Tribunal in its earlier order dated 10th November, 2017 recorded that, Petitioner-Trust has, *prima facie*, case. Counsel submitted that the Petitioner-Trust runs several educational institutions and hospitals. On account of the tax dues and the coercive recovery initiated by the Department, the Petitioner-Trust finds it extremely difficult to run these institutions. He further submitted that in the different bank accounts, which are under the attachment of the Department, a sum of Rs.18 Crores is already lying. He clarified that this includes a sum of Rs.1,11,37,877/- payable by the Government of India to the Petitioner-Trust, which also, the Income Tax Department has attached. The Department may be allowed to withdraw Rs.18 Crores from such balance and upon which, Petitioner-Trust may be granted stay against further recoveries.

7 On the other hand, learned Counsel for the Department submitted that looking to the Petitioner's past conduct, Petitioner does not deserve unconditional stay of coercive recovery. The condition of deposit of Rs.18 Crores was imposed by the Tribunal way-back in the month of November, 2017. Petitioner-Trust at any rate cannot now expect stay against recoveries on same terms.

8 We have noted the facts which emerge from the record. We are conscious of the Petitioner's earlier Petition being dismissed by this

Court on the ground of conduct. However, in the present Petition, we are dealing with Petitioner's challenge to fresh order dated 18th December, 2018 passed by the Tribunal, which can be seen as a fresh cause of action and which may not be allowed to be mixed up with past events, at least, in so far as the maintainability of the Petition is concerned. We, have, therefore, heard learned Counsel for the parties on merits.

9 What *prima facie* emerges is that, the Tribunal had passed an order on 10th November, 2017, protecting the Petitioner-Trust against the recoveries of unpaid tax and interest on the condition that, the Petitioner-Trust deposits with the Department, a total sum of Rs.18 Crores in three equal installments. Since Petitioner-Trust could neither have these conditions altered, nor could the Petitioner-Trust fulfill the conditions, the Tribunal later on passed the impugned order on 18th December, 2018, rejecting the stay applications of the Petitioner-Trust. This would give rise to recovery of entire tax of around Rs.142 Crores with interest. It would be open to and in fact, department has initiated coercive recovery. Whatever be the interim events, we cannot lose sight of the fact that the Tribunal in its order dated 10th November, 2017 had found prima facie case in favour of the Petitioner which persuaded the Tribunal to grant stay against and further recoveries on the condition of depositing Rs.18 Crores. Not protecting the Petitioner-Trust at this stage, may have severe adverse effect on running its several educational and medical institutions, rendering the staff jobless and students without college.

10 We would, therefore, put the Petitioner-Trust back to the same position as on 10th November, 2017. The Tribunal had granted conditional stay to the Petitioner-Trust, which order, in any case, the

Department had not challenged. However, we cannot lose sight of passage of time in between. We, therefore, insist that the Petitioner-Trust deposits with the Department a total sum of Rs.20 Crores, upon which, there shall be stay against further recoveries. Petitioner-Trust would also co-operate for the early disposal of the Appeals before the Tribunal.

11 Before closing, we notice that the Division Bench of this Court in Writ Petition No. 408 of 2018 and other connected Petitions has passed an order on 18th June, 2018, recording the dispute between the Petitioner-Trust and the Income Tax Department. In such Petition, the Petitioner-Trust and the similarly situated Trusts have complained about the State Government not releasing educational grants. From the said order passed by the Division Bench, we notice that under the order of the Court, the State Government has deposited sizeable amount which is payable to the Petitioner-Trust. However, Division Bench did not release said amount in favour of the Petitioner, instead made following observations:-

> *" Therefore, we direct that since the amount has now been credited to the account of the State of Maharashtra and the account of this Court in the RBI is now debited, as is clear from the certificate tendered today, let the State Government retain that sum till 5th July, 2018 with it without making any adjustment or appropriation towards its outstanding dues nor it should remit the same to the Management. If within this time suitable orders and directions are obtained by the petitioner-Management from the Bench, which is assigned cases under the direct tax laws, our order would take due note of the same and thereafter, further directions would be issued. In the event no clarifications/directions are obtained within this time, on the adjourned date, the court would be free to pass such orders as are permissible in law."*

12 We leave it to the Petitioner-Trust to approach the Co-

ordinate Bench in such pending Petition for appropriate order with respect to such funds.

13 In view of the above facts, **Petition** is **disposed of** with the following directions:-

(i) Petitioner-Trust shall deposit in its bank account such amount as may be necessary so as to make the total balance available between all accounts of the Petitioner-Trust to a minimum of Rs.20 Crores. This shall be done within six weeks from today. It is clarified that this requirement of raising a total of Rs.20 Crores would include a sum of Rs.1,11,37,877/- payable by the Government of India to the Petitioner-Trust which also Income Tax Department has attached;

(ii) As soon as this is done, the Petitioner shall intimate it to the Department in writing.

(iii) The Tribunal to expedite the hearing of the Petitioner's Appeals and dispose of preferably within six months from the date of receipt of this order;

(iv) Petitioner-Trust is directed to co-operate with such early disposal of the Appeals;

(v) Upon Petitioner-Trust fulfilling conditions of raising total sum of Rs.20 Crores in the bank accounts (inclusive of Rs.1,11,37,877/-) as mentioned above, the Department would withdraw and adjust the same against the Petitioner's outstanding dues;

(vi) As soon as Petitioner-Trust fulfills the conditions contained in clause

(i) above, the bank account and other attachments would stand revoked;

(vii) There shall be stay against further recoveries of the tax and interest dues arising out of the Petitioner's pending Appeals till the final disposal. By virtue of this order and subject to the Petitioner-Trust fulfilling conditions contained herein above, there shall be no further recoveries of the impugned tax dues from any source.

(viii) It would be open for the Petitioner-Trust to approach the Co-ordinate Bench in pending Writ Petition No.408 of 2018 and pray for appropriate relief in such Petition after fulfilling these conditions.

(M.S.SANKLECHA,J.) **(AKIL KURESHI,J.)**