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

WRIT PETITION NO.177 OF 2019

National Health & Education Society } **Petitioner**

Vs

Income Tax Officer (TDS) 2(3)(3)
Mumbai and Anr. } **Respondents**

Mr.S.C.Tiwari a/w Ms.Rutuja N. Pawar for the Petitioner.

Mr.Prakash C. Chhotaray for Respondent No.1.

CORAM :- S. C. DHARMADHIKARI &
M. S. KARNIK, JJ.

DATE :- MARCH 4, 2019

P.C. :-

1. The prayer in this writ petition is as under :-

> "(a) The Hon'ble Court may be pleased to issue a writ of mandamus or a writ of certiorari or any other writ in the nature of certiorari, or any other appropriate writ, directions or orders of this Hon'ble court directing Respondent No.1 not to insist upon recovery of any part of disputed demand for A.Y.2012-13 until the disposal of the Petitioner's appeal pending before Respondent No.2 and 2 weeks thereafter."

2. The petitioner's case is that the assessee/petitioner is a beneficiary of certain orders of the Tribunal for Assessment Years

2004-2005 and 2011-2012. The copies of these orders are at Exhibits-A1 to A4. Thereafter, even the Assessing Officer exercising his power, in assessment under the Income Tax Act, 1961 gave effect to the Tribunal's order reducing the entire demand. That was done on 30th March, 2016 vide Exhibits-B1 to B7.

3. Then the statements under Section 200(3) of the Income Tax Act, 1961 were filed by the petitioner, copies of which are at Exhibits- C1 to C8.

4. Still the petitioner was served with a demand notice and thereafter the petitioner preferred appeals and also applications for rectification. Fearing that there would be a coercive recovery, even application for stay has been filed. It is contended that the concerned authority rejected the petitioner's application without applying its mind.

5. This writ petition was kept pending because on merits, an identical issue as raised in the instant petition was considered in a batch of appeals at the instance of the Revenue and in the case of the same assessee by a Division Bench of this Court comprising one of us (S.C.Dharmadhikari, J).

6. On 26th February, 2019, this Court passed its order and the Revenue's Appeals have been dismissed.

7. Now, let the petitioner make an application and invoke the guidelines also, which have been issued by the Central Board of Direct Taxes, New Delhi dated 29th February, 2016 guiding the Commissioner of Income Tax (Appeals). It is not necessary that the Income Tax Appellate Authority will insist on a deposit of certain percentage of the amount and make that as a condition for granting interim stay. In the event the petitioner approaches him and now with the reliance on the Division Bench judgment referred by us hereinabove, we have no doubt in our mind that the Income Tax Appellate Authority and in this case, the Commissioner of Income Tax would definitely apply his mind and consider the changed circumstances. He will not be influenced by the earlier actions and orders and pass a fresh order and communicate the same to the petitioner.

8. Let the petitioner seek intervention once again and raise all pleas and also rely upon the Division Bench judgment. In the event, such an application is made, the Commissioner of Income Tax to dispose of it in the light of the Division Bench judgment and in accordance with law within a period of two weeks from the date of its receipt.

9. Mr.Chhotaray appearing for the Revenue is kind enough to say that he will inform the Commissioner about the order of this Court and the Commissioner would then act on an authenticated copy of the same.

10. The writ petition is disposed of.

(M.S.KARNIK, J.) **(S.C.DHARMADHIKARI, J.)**