R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO. 806 OF 2019

J.C.S. Exports, Mumbai .. Petitioner

Versus

Income Tax Officer, Ward 26(1)(4), Mumbai & Ors. .. Respondents

....

- Mr. Atul Jasani for the Petitioner
- Mr. Sham Walve for the Respondents

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CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.

DATE : MARCH 28, 2019.

P.C.:

1. Heard learned counsel for the parties for final disposal of the petition.

2. The petitioner has challenged the action of the respondents – Revenue Authorities in forcibly recovering sum of Rs. 60,74,625/- from the bank accounts of the petitioner.

3. Brief facts are as under:-

3.1 The petitioner is a partnership firm and is engaged in the business of import and export. The Assessing Officer passed the order of assessment under Section 143(3) of the Income Tax Act, 1961 ("the Act" for short) in relation to the petitioner's return of income for the assessment year 2016-17 on 28.12.2018. He determined the assessee's total income at Rs. 1.48 crores (rounded of) and raised demand of Rs. 60,65,300/- which included interest under Section 234B and 234C of the Act. The petitioner preferred an appeal against such order of assessment. Pending such appeal, the petitioner requested the Assessing Officer to keep the demand in abeyance. The Assessing Officer passed the order which reads as under:-

> "2. With reference to the above subject and in response to your letter, this is to state that your stay application for stay of demand of Rs. 60,65,300/- is hereby rejected because you have not paid 20% of the disputed demand. Therefore, you are requested to pay 20% of the disputed demand for A.Y. 2016-17 as per Boards Circular dated 31st July, 2017, Instruction No. 1914 vide O.M. No. 404/72/93-ITCC dated 29.2.2016. Hence, in this connection, since you have preferred an appeal before the Ld. CIT (A)-38, Mumbai,you are however, required to pay 20% of the disputed demand.
>
> 3. Thus, your stay of demand application is rejected forthwith and you are requested to pay 20% of the demand immediately after receipt of this letter."

4. The language of this order is some what self contradictory, however, reading the order as a whole would indicate that the Assessing Officer required the petitioner to deposit 20% of the demand in order to enjoy the stay against recovery of rest of the demand.

5. Strangely, on that very date, the Assessing Officer also attached the petitioner’s bank accounts. This order dated 25.2.2019 was served on the petitioner only on 5.3.2019. Promptly on 6.3.2019, the petitioner wrote to the Assessing Officer requesting him to recover 20% of the demand from its bank account in Union Bank of India and release the attachment on the bank accounts. On 8.3.2019, the petitioner again wrote to the Joint Commissioner of Income Tax and reiterated this request. Strangely on 8.3.2019, the Assessing Officer withdrew the entire amount of Rs. 60,74,625/- from the petitioner’s bank accounts.

6. The action of the Authorities cannot be sustained. The facts are eloquent. The Assessing Officer required the petitioner to deposit 20% of the tax to enable the petitioner to avoid recovery of the rest of the amount pending appeal. On the same date, he passed this order, attached the petitioner's bank accounts thereby making impossible for the petitioner to fulfill this condition. The petitioner immediately upon service of this order communicated to the Assessing Officer that he is not averse to deposit 20% of the disputed amount, however, since the bank accounts are under attachment, the Assessing Officer may withdraw the corresponding sum form the bank account indicted by the petitioner. Instead of doing so, the Assessing Officer withdrew the entire tax demand and a small sum over and above the said amount through the petitioner's bank accounts. Under no circumstances, the Assessing Officer could have acted in such high handed manner. He shall forthwith refund the amount minus 20% of the disputed sum. This shall be done without any delay whatsoever.

7. The petition is disposed of accordingly.

[SARANG V. KOTWAL, J.] **[AKIL KURESHI, J]**