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

WRIT PETITION NO.969 OF 2019

Universal Exports .... Petitioner
versus
Income Tax Officer
Ward – 21(3)(4) ... Respondent

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- Mr.Harsh Kapadia, Advocate for Petitioner.
- Mr.Suresh Kumar, Advocate for Respondent.

CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.
DATE : 05th APRIL, 2019.

P.C. :

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

2. The Petitioner has challenged the orders passed by the Assessing Officer and Principal Commissioner of Income Tax, insisting that the Petitioner must deposit 20% of the disputed tax demand pending the Appeal against the order of assessment before the Commissioner (Appeals).

3. The Petitioner is a partnership firm. The Petitioner had filed the return of income for the assessment year 2016-17. This return was taken in scrutiny by the Assessing Officer. The Assessing Officer noticed major discrepancies in the Petitioner's books of accounts and the auditor's report furnished by the Petitioner. After putting the Petitioner to notice, the Assessing Officer rejected the Petitioner's books of accounts and proceeded to make additions to returned income. He passed the order of assessment accordingly under section 143(3) of the Income Tax Act, 1961 (for short 'the Act') on 29/12/2018. Against such order of assessment, the Petitioner has filed Appeal before the Commissioner (Appeals) which is pending. Pending such Appeal, the Petitioner requested the Assessing Officer to stay the demand unconditionally. The Assessing Officer rejected such a request by the order dated 13/02/2019. The Petitioner thereaupon approached the Principal Commissioner who insisted that the Petitioner must deposit 20% of the disputed tax to enable the Petitioner to enjoy the stay against the recoveries.

Since the Petitioner had not fulfilled such condition, departmental authorities have attached the Petitioner’s following two bank accounts.

(1) Union Bank of India, Opera House Branch,
O/D A/C No.318801010036729

(2) State Bank of India, Mahim Branch,
O/D A/C No.30395061753

4. The Petitioner's challenge therefore is two fold, firstly the Petitioner seeks stay against further recoveries. In the meantime, the Petitioner has already deposited a sum of Rs.4.5 lakhs by now. The Petitioner’s second challenge is to the attachment of the bank accounts contending that such accounts were overdraft accounts and therefore in any case could not have been attached by the department.

5. Learned Counsel for the Petitioner submitted that the Assessing Officer has made substantial additions without

sufficient evidence on record. In any case, the Assessing Officer having made additions, on the basis of gross profit rate taking average of last few years of Petitioner's business, could not have thereafter made further additions under section 68 of the Act. The Petitioner thus has strong prima facie grounds to urge before the Appellate authority. He submitted that in any case, the department cannot attached the Petitioner's overdraft accounts.

6. Learned Counsel Mr.Suresh Kumar appearing for the department opposed the Petition contending that the Assessing Officer has passed a detailed order of assessment, giving reasons for the additions made. There is no case for reducing the condition of deposit 20% imposed by the Respondents.

7. Having thus heard learned Counsel for the parties, we find that the Petitioner has some prima facie grounds against the order of assessment. The question would be, once the Assessing Officer makes additions to the income of the Petitioner by

applying formula of gross profit rate shown by the Petitioner in last few years, could the Assessing Officer thereafter make further additions on individual grounds? Would such additions not to be telescoped in the gross profit rate adopted by the Assessing Officer?

8. These are the grounds, which we are sure, the Petitioner would raise about before the Commissioner (Appeals) and the Commissioner (Appeals) would take a view in accordance with the law. However, taking into account totality of the facts and circumstances of the case, in our opinion, asking the Petitioner to deposit 10% of the disputed tax pending the Appeal, would serve the purpose of justice. Subject to Petitioner fulfilling such condition, further recoveries be stayed till the Appeal is disposed of by the Appellate authority.

9. In the result, the Petition is disposed of with following directions;

(i) The Petitioner shall deposit further amount before the Income Tax authorities latest by 15/04/2019, so as to make the total deposit with the department (inclusive of 4.5 lakhs already deposited) of 10% of the disputed tax demand.

(ii) Upon the Petitioner fulfilling such condition, the further recoveries would be stayed.

(iii) Counsel for the Petitioner stated that the Petitioner's Union Bank O/D Account No.318801010036729 Opera House Branch, has sufficient funds to fulfill said condition of deposit. We permit the department to withdraw such amount from the account that would meet with the above condition of deposit of 10% with intimation to the Petitioner and thereafter forthwith release both the bank accounts from the attachment.

(SARANG V. KOTWAL, J.) **(AKIL KURESHI, J.)**