

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.180 OF 2020

THE PIRNA URBAN CO-OPERATIVE
CREDIT SOCIETY LTD.,

acting through its Authorized

Representative Mr. Sujit Kunju Kunju,

duly authorized vide Resolution dated

20.02.2020, having its Office at

“Sankalp”, Pirna, Bardez – Goa 403513.

.... Petitioner

Versus

INCOME TAX OFFICER, WARD 1(4),

Having office at Aayakar Bhawan, 5

EDC Complex, Patto Plaza,

Panaji – Goa.

.... Respondent

Mr. Gaurang Panandiker with Ms. Eesha Dukle, Advocates for the
Petitioner.

Ms. Amira Razaq, Standing Counsel for the Respondent.

Coram:- M.S. SONAK &
NUTAN D. SARDESSAI, JJ.

Date:- 25th February, 2020

JUDGMENT (Per M.S. Sonak)

Heard Mr. Gaurang Panandiker for the Petitioner and Ms.
Amira Razaq, Standing Counsel for the Respondent.

2. Rule. Rule is made returnable forthwith at the request and with the consent of the learned counsel for the parties.

3. The challenge in this petition is to the notice dated 12.02.2020 issued by the Income Tax Officer (ITO) to the petitioner's bank i.e. Ratnakar Bank Ltd., requiring the bank to remit an amount of ₹33,42,040/- as dues towards the payment of income tax by the petitioner.

4. Mr. Panandiker points out that the petitioner has already instituted an appeal against the assessment order which has become the basis for the demand for the aforesaid sum of ₹33,42,040/-. Besides, he points out that the ITO himself, vide communication dated 15.01.2020 addressed to the petitioner – assessee, has made it clear that the recovery of the entire amount can be stayed pending disposal of the appeal, provided, the petitioner, pays 20% of the demanded amount, which, in the present case, totally comes to ₹13,37,462/- or thereabouts. Mr. Panandikar points out that the petitioner, vide his application dated 22.01.2020 has pointed out to the ITO that the petitioner, is due to get refund of ₹23,66,633/- from the Income Tax Department and therefore, the amount of ₹13,37,462/- may be adjusted from out of the refunds due to the petitioner. Mr. Panandiker submits that the petitioner's application dated 22.01.2020 is yet to be decided by the ITO and in these circumstances there was no

justification for the issuance of the impugned notice dated 12.02.2020.

5. Ms. Razaq, the learned Standing Counsel for the respondent submits that since, an amount of ₹33,42,040/- is due and payable by the petitioner – assessee and further, since, there is no stay granted by any authority, there was no error in the issuance of the notice dated 12.02.2020.

6. We have considered the rival contentions.

7. In terms of the communication dated 15.01.2020 addressed by the ITO, it is clear that the demand can be stayed by the ITO provided, the assessee, pays 20% of the demanded amount pending the appeal against the assessment order. The 20% of the demanded amount comes approximately to ₹13,37,462/-. It is not as if the petitioner, has declined to pay this amount. The petitioner, by its application dated 22.01.2020 has merely pointed out that the tax refunds due to the petitioner are to the tune of ₹23,66,633/-. The petitioner, has therefore only requested that necessary adjustments be made from out of the tax refunds due to the petitioner.

8. According to us, the ITO, was required to consider the petitioner's application dated 22.01.2020 which is in fact, an application seeking for stay on the recovery of the entire demanded

amount before issuing the impugned notice dated 12.02.2020. On this short ground, we are inclined to defer the execution of the impugned notice dated 12.02.2020. This is more so because Mr. Panandiker, the learned counsel for the petitioner on instructions, makes a statement that despite the impugned notice dated 12.02.2020 as yet, his bankers, have not remitted this amount to the Income Tax Department.

9. Therefore, if the petitioner's bankers have till date, not acted on the impugned notice dated 12.02.2020, then, they need not act upon the same until they receive further orders from the ITO. The ITO, to hear the petitioner – assessee and dispose of the application dated 22.01.2020 seeking, in effect, a stay on the recoveries as expeditiously as possible and in any case within a period of six weeks from today. Until the petitioner's application dated 22.01.2020 is disposed of, the ITO to not insist upon compliance with the impugned notice dated 12.02.2020.

10. The petitioner – assessee to appear before the ITO on 04.03.2020 at 10.30 a.m. and file an authenticated copy of this order. Further, the petitioner, to cooperate with the ITO in the matter of disposal of the application or the request in the application dated 22.01.2020.

11. The petitioner is also authorized to communicate the authenticated copy of this order to the Ratnakar bank Ltd., so that, the bank, need not act upon the impugned notice dated 12.02.2020 until it receives further orders from the ITO in this regard.

12. Rule is disposed of in the aforesaid terms. There shall be no order as to costs.

13. All concerned to act on the basis of an authenticated copy of this order.

NUTAN D. SARDESSAI, J.

M. S. SONAK, J.