IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 108 OF 2020

Deepak Valji Karia .. Petitioner

v/s.

Tax Recovery Officer -28 and ors. .. Respondents

Ms. Ritika Agarwal a/w. Mr. Salman Balbale i/b. ACE Legal for the Petitioner.

Mr. N.C. Mohanty for the Respondents.

CORAM: UJJAL BHUYAN, &
MILIND N. JADHAV, JJ.

DATE : FEBRUARY 4, 2020

P. C :-

. Heard Ms. Agarwal, learned counsel for the petitioner and Mr.N.C.Mohanty, learned standing counsel, revenue for the respondents.

2. By filing this petition under Article 226 of the Constitution of India, petitioner has prayed for the following reliefs :

(a) To issue writ of Mandamus or direction or order in the nature of Mandamus or writ of Certiorari under Article 226 of the Constitution of India quashing the impugned order dated 05.12.2019 issued by Respondent No.1 rejecting the stay of balance disputed demand.

(b) To issue writ of Mandamus or direction or order in the nature of Mandamus or writ of Certiorari under Article 226 of the Constitution of India quashing the impugned orders dated 14.06.2019 and 22.11.2019 issued by Respondent No.2 directing the petitioner to pay 50% of balance disputed demand.

(c) To issue writ of Mandamus or direction or order in the nature of Mandamus or writ of Certiorari under Article 226 of the Constitution of India to declare the impugned orders passed by Respondent No.1 and Respondent No.2 as invalid.

(d) Direct Respondent No.2 to take steps to expedite the proceedings before the CIT(A)-26 in appeal filed by the Petitioner.

(e) Pending the hearing and final disposal of this Petition, the effect, implementation and operation of impugned order dated 05.12.2019 passed by the Respondent No.1 as per directions of Respondent No.2 be stayed.

(f) Pending the hearing and final disposal of this Petition, the effect, implementation and operation of impugned orders dated 14.06.2019 and 22.11.2019 passed by the Respondent No.2 be stayed.

(g) To grant ad-interim relief in terms of prayer (a) to (f) as stated hereinabove.

(h) To award cost of the petition to the Petitioner

(i) To grant such other relief as is deemed fit under law and

(j) Equity in the circumstances and facts of the case.

3. The above prayers have been made in the context of the following facts :

4. Petitioner is an individual and an assessee under the Income Tax Act, 1961 (**"the Act"** for short). He is subject to assessment jurisdiction of respondent No.3. In the assessment order dated 29.12.2017 for the Assessment Year 2015-16 Assessing Officer added two sums of Rs.12,28,62,584.00 and Rs.61,43,129.00 under Sections 68 and 69 of the Act which resulted in higher tax demand of Rs.5,83,88,550.00.

5. Against the above order of assessment dated 29.12.2017, petitioner has preferred an appeal under Section 246A of the Act before the Commissioner of Income Tax (Appeals) on 20.01.2018. It is stated that petitioner has deposited 20% of the disputed tax demand on 31.01.2018 amounting to Rs.1,16,80,000/-. It is further stated that the deposit was in compliance to office memorandum dated

29.02.2016 of the Central Board of Direct Taxes (CBDT).

6. Notwithstanding the same and despite pendency of the appeal, Assessing Officer insisted on payment of 50% of the disputed tax amount. Petitioner informed the Assessing Officer that he was passing through severe financial condition and it was not possible to pay the said amount. However, petitioner’s request was not accepted where-after impugned orders dated 14.06.2019 and 22.11.2019 were issued by respondent No.2 for deposit of 50% of the disputed tax amount.

7. Thereafter respondent No.1 passed impugned order dated 05.12.2019 following which it is submitted that several bank accounts of the petitioner have been sealed.

8. On the last occasion, when the case was called upon for admission hearing, we asked learned counsel for the petitioner to provide us the registration number of the appeal filed by the petitioner before Commissioner of Income Tax (Appeals) on 20.01.2018.

9. Today, when the matter is called upon, learned counsel for the petitioner submits that the appeal pending before Commissioner of Income Tax (Appeals), Mumbai-26 is Appeal No. 10348/2017-18 and it is pending since 20.01.2018. She also submits that assessment order similar to the one passed in respect of the petitioner was passed in the case of brother of the petitioner namely Dharmendra Valji Karia whereafter he paid 20% of the tax demand though he has also filed appeal before the Commissioner of Income Tax (Appeals). In the case of brother, Pr. Commissioner of Income Tax-15, Mumbai, has passed an order on 10.12.2019 stating that since the assessee i.e. Dharmendra Valji Karia had paid 20% of the demand raised in the assessment order under consideration and his appeal is pending before the Commissioner of Income Tax (Appeals), declining the proposal of the Assessing Officer for collection of more than 20% of the outstanding demand. Pr. Commissioner of Income Tax has also requested the jurisdictional Chief Commissioner for permission to move the Commissioner of Income Tax (Appeals) for deciding the appeal on priority basis. She also submits that sealing of bank accounts of the petitioner has adversely affected him.

10. On a query of the Court, Mr.Mohanty, learned counsel fairly submits that as per Central Board of Direct Taxes Office Memorandum dated 29.02.2016 assessee was required to pay 15% of the tax demand to enable stay of the demand during pendency of appeal. By subsequent memorandum the quantum has been revised to 20%. However, he submits that considering the nature of assessment proceeding vis-a-vis the petitioner and the huge amounts of additions made under Sections 68 and 69 of the Act, Assessing Officer had insisted on deposit of an amount more than 20%.

11. We have heard learned counsel for the parties and considered the rival submissions.

12. On due consideration, we are of the view that it would be in the interest of justice if the appeal filed by the petitioner which is pending before the Commissioner of Income Tax (Appeals) Mumbai-26 for more than two years now is heard and decided expeditiously.

13. We are also of the view that having regard to stay of demand in the case of Dharmendra Valji Karia on deposit of 20% of the tax demand, the same treatment be extended to the petitioner as he has also deposited 20% of the tax demand which is in conformity with the CBDT Office Memorandum. That apart, when the petitioner had deposited 20% of the tax demand and his appeal is pending before the first appellate authority, it was not justified on the part of the revenue authority in sealing the bank accounts of the petitioner thereby creating hurdles in his day-to-day activities.

14. Consequently and in the light of the above, we issue the following directions :

(i) Appeal No. 10348/2017-18 of the petitioner pending before Commissioner of Income Tax (Appeals) Mumbai-26 shall be decided expeditiously and in any event within a period of three months from the date of receipt of an authenticated copy of this order.

(ii) Since petitioner had deposited 20% of the tax demand in terms of the Assessment Order, there shall be stay of recovery of the balance amount till disposal of the appeal as aforesaid.

(iii) Bank accounts of the petitioner which are stated to have been sealed by the respondents shall be resealed forthwith.

14. Writ Petition is accordingly disposed of.

(MILIND N. JADHAV, J.) **(UJJAL BHUYAN,J.)**