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

WRIT PETITION (L) NO.845 OF 2020

Humuza Consultants ... Petitioner
V/s.
Assistant Commissioner of Income Tax,
Circle -23(1), Mumbai and ors. ... Respondents

Mr.Nishant Thakkar with Mr.Hiten Chande i/by M/s PDS Legal, Advocate for the Petitioner.
None for the Respondents.

CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.
DATE : MARCH 17, 2020

P.C.:-

1. Heard Mr.Thakkar, learned counsel for the petitioner. None appears for the respondents, though it is submitted by Mr.Thakkar that petitioner had served the respondents, whereafter affidavit of service has been filed.

2. By filing this petition under Articles 226/227 of the Constitution of India, petitioner seeks a direction to the respondents not to take any coercive steps for recovery of demand in terms of the notice of demand dated 29th December, 2019 and for a direction to respondent No.1 to release the three bank accounts of the petitioner, one with Bank of India bearing No.012220110000449 and the other

two with ICICI Bank bearing Nos.039305008509 and 039313011525.

3. After hearing Mr.Thakkar and on going through the materials on record, we find that petitioner is a partnership firm assessed to income tax jurisdiction under respondent No.1. Petitioner derives income from interest earned from fixed deposits, dividend on shares and profit on sale of shares. For the assessment year under consideration i.e. 2017-18, petitioner filed e-return of income on 28th July, 2017 declaring total income of Rs.68,33,07,135.00 and exempt income of Rs.39,75,96,305.00. The return was processed under Section 143(3) of the Income Tax Act, 1961 and by the assessment order dated 29th December, 2019, respondent No.1 as the Assessing Officer added back an amount of Rs.3,93,39,28,268.00 to the income of the petitioner under Section 68 of the Income Tax Act, 1961 (briefly "the Act" hereinafter) as unexplained credit. Thus, the assessed income was quantified at Rs.4,61,72,35,403.00.

4. Respondent No.1 on the same day i.e. on 29th December, 2019 issued notice of demand to the petitioner under Section 156 of the Act calling upon it to pay a sum of Rs.3,68,82,72,123.00.

5. According to the petitioner, it has filed an application for stay of demand before respondent No.1 on 3rd March, 2020 raising various grounds therein as to why the demand should be stayed.

6. It is further stated that aggrieved by the order of assessment, petitioner has preferred an appeal before the Commissioner of Income Tax (Appeals)-33, Mumbai ("CIT (Appeals)" for short hereinafter) i.e. respondent No.4 on 6th March,2020 bearing acknowledgment No. 318086151060320.

7. Grievance of the petitioner is that without taking any decision on the stay application of the petitioner, respondent No.1 has attached the above three bank accounts of the petitioner by issuing garnishee notices under Section 226(3) of the Act. Not only that, respondent No.1 has withdrawn an amount of Rs.1,29,42,486.00 from the above three bank accounts to the prejudice of the petitioner.

8. Faced with such a situation, the present writ petition has been filed.

9. After hearing learned counsel for the petitioner and on going through the materials on record, we feel that it would meet the ends of justice if respondent No.1 takes a decision on the stay application of the petitioner in accordance with law within a period of 10 days from the date of receipt of an authenticated copy of this order.

10. Ordered accordingly.

11. Till the stay application is decided, there shall be no further withdrawal of money from the above three bank

accounts of the petitioner and whatever withdrawals have been made, the same shall be subject to such order that may be passed by respondent No.1 in terms of the present order. Attachment of the bank accounts would also be subject to outcome of such order that may be passed by respondent No.1.

12. Petitioner would also be at liberty to move respondent No.4 for early hearing of the appeal as well as for stay of the outstanding demand and if such prayer is made, the same shall be considered in accordance with law by respondent No. 4.

13. However, if any decision is taken adverse to the petitioner by respondent No.1, the same shall not be given effect to for a period of two weeks thereafter.

14. Before parting with the record, it is made clear that we have not expressed any opinion on merit.

15. Writ petition is disposed of.

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

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