IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4715 OF 2020

M/s Mascot Construction Co.
(Partnership Firm),
Through its Managing Partner
Shri Khaja Aminuddin S/o Shaikh Mehboob,
Age : 62 Years, Occu. Business,
R/o H. No.1-27, New Road,
Manzoorpura, Aurangabad – 431001 ..PETITIONER

VERSUS

1. Pr. Commissioner of Income-tax-2,
Aaykar Bhavan, Cantonment
Aurangabad, Tq. & Dist. Aurangabad

2. Asstt. Commissioner of Income-tax
Circle-3, R/o Income-tax Office,
2nd Floor, "Given Suman",
LIC Building, N-5, CIDCO,
Aurangabad

3. Commissioner of Income-tax
(Appeals)-2, Aurangabad ..RESPONDENTS

Mr. R.R. Chandak, Advocate for petitioner;
Mrs.Kalpalata Bharaswadkar-Patil, Advocate for respondents

CORAM : R.D. DHANUKA
AND
S. G. MEHARE, JJ.

DATE : 6th April, 2022

P.C.

1. By this petition filed under Article 226 of the Constitution of India, the petitioner has impugned the order dated 26.8.2019 passed by the Principal Commissioner of Income Tax-2, Aurangabad rejecting review application for stay.

2. Petitioner has already filed an appeal before the Commissioner of Income-Tax on 16.1.2018 impugning the Assessment Order for the Assessment Year 2015-16 on 19.12.2017 thereby assessing the income of Rs.5,29,52,162 and final demand of Rs.1,78,61,830/-.

3. The Assessing Authority passed an order on 5.3.2018 directing the petitioner to deposit 20% of demand of tax for stay of the whole demand. Being aggrieved by the said order, the petitioner filed Writ Petition No.13233 of 2019 before this Court. By an order dated 10.4.2019, the Division Bench of this Court in Writ Petition No.13233 of 2018 observed that the office memorandum has streamlined the procedure for considering stay petition and it lays down payment of 20% of tax demand as pre-condition for grant of stay on demand with a rider that in view of nature of addition resulting in the disputed demand is such that payment of a lump sum amount lower than 20%

is not warranted.

4. This Court, in the said judgment, observed that the case put-forth by the petitioner had not been dealt with while passing the impugned order and direction against the petitioner to deposit 20% of the tax demand which is a pre-condition for grant of stay on demand and accordingly was pleased to quash and set aside the order and remanded the proceedings for deciding the matter afresh.

5. Pursuant to the said judgment delivered by this Court, respondent no.2 heard the matter again and passed a fresh order on 24.5.2019 directing the petitioner to deposit 20% of the tax demand. Being aggrieved by the said order, the petitioner filed a review petition before the Commissioner of Income Tax. By an order dated 26.8.2019, the Commissioner of Income Tax rejected the said review application filed by recording various reasons. The Commissioner of Income Tax upheld the order passed by the Assessing Officer on 24.5.2019.

6. Mr. Chandak, learned Counsel for the petitioner submits that since August, 2019, no action has been taken by the Revenue against the petitioner though the petitioner had not complied with the said

order of deposit of 20% of the tax demand. He submits that the appeal filed by the petitioner before the first Appellate Authority is pending and thus the Appellate Authority be directed to dispose of the said appeal expeditiously without directing the petitioner to deposit the amount of 20% of the tax demand.

7. Learned Counsel placed reliance on the judgment of this Court in the case of **Bhupendra Murji Shah vs. Deputy Commissioner of Income Tax & ors., (2018) 305 CTR (Bom.) 88** and would submit that in the facts of that case, this Court had directed the Appellate Authority to decide the appeal itself without compliance of any pre-condition of deposit of 20%.

8. Learned Counsel for the Revenue, on the other hand, submits that the amount demanded from the petitioner is substantial. The petitioner has challenged the earlier order passed by the Assessing Officer before this Court by filing a writ petition. While remanding the matter back to the Assessing Officer, this Court had considered that the Assessing Officer has not dealt with the case put-forth by the petitioner. She submits that after order of remand, the Assessing Officer has recorded various reasons after dealing with all the

submissions advanced by the petitioner and thus, no interference is warranted with the order passed by the Assessing Officer and also by the Commissioner of Income Tax in the Review Application filed by the petitioner.

9. Perusal of the order dated 10.4.2019 passed by the Division Bench of this Court in earlier Writ Petition bearing No.13233 of 2018 filed by the petitioner clearly indicates that the earlier impugned order was quashed and set aside by this Court on the ground that the case put-forth by the petitioner had not been dealt with while passing the impugned order so as to substantiate the discretion exercised by the Assessing Officer. This Court accordingly remanded the matter back to the Assessing Officer for passing a fresh order.

10. Perusal of the order passed by the Assessing Officer on 24.5.2019 clearly indicates that the Assessing Officer has dealt with all the issues raised by the petitioner as to why the Assessing Officer shall exercise his discretion not to impose any condition of deposit of 20% as a pre-condition for grant of stay. The petitioner was not satisfied with the order passed by the Assessing Officer and filed Review Petition, which also came to be rejected by the learned

Commissioner of Income Tax by passing a detailed reasoned order dated 26.8.2019.

11. In our view, the Assessing Officer was justified in not exercising the discretion to grant unconditional stay or stay on payment of lesser amount than 20% of the tax demand. The Assessing Officer while rejecting the said case of the petitioner has recorded reasons in great detail. The Commissioner of Income Tax while rejecting the Review Application has recorded reasons as to why the order passed by the Assessing Officer shall not be interfered with. We do not find any infirmity in the order passing by the Assessing Officer as well as by the Commissioner of Income Tax while rejecting the request of the petitioner for granting unconditional stay during the pendency of the appeal filed by the petitioner.

12. We are not inclined to accept the submission of the petitioner that since the appeal is pending for quite some time, instead of directing the petitioner to comply with the order passed by the Assessing Officer which is not recalled by the order passed by the Commissioner of Income Tax, the Appellate Authority shall be directed to dispose of the appeal expeditiously. The Appellate

Authority has not fixed any date for hearing of the appeal in view of the petitioner not having complied with the conditional order passed by the Assessing Officer. Though this petition was filed by the petitioner on 26.9.2020, no interim relief has been granted by this Court in favour of the petitioner.

13. So far as the judgment of this Court in the case of Bhupendra Murji Shah (supra) relied upon by Mr. Chandak, learned Counsel for the petitioner is concerned, perusal of the said judgment indicates that in that matter this Court had clarified that no opinion on merits was expressed. The said order was passed in the peculiar facts and circumstances of the petitioner's case and only because the learned Counsel for the petitioner had informed the Court that the Commissioner of Income Tax (Appeal) had already scheduled the matter for hearing and had already heard the matter partly. In the facts of that case, this Court accordingly directed the Commissioner of Income Tax (Appeal) to decide the appeal expeditiously. This Court while passing the said order clarified that this Court would have relegated the petitioner to the remedy of making an application for stay before the Commissioner of Income Tax (Appeal) and thereafter left it to the Commissioner of Income Tax to take an appropriate

decision thereon. However, since the appeals were not being heard, such order came to be passed. This Court also clarified that the said order shall not be treated as precedent for all cases of of this nature. This Court recorded an undertaking of the petitioner in that matter that during the pendency of the appeals before the Commissioner of Income Tax (Appeal), the petitioner shall not dispose of or create third party right in respect of his movable assets and properties.

14. In our view, the facts before this Court in the case of Bhupendra Murji Shah (supra) were totally different and are distinguishable in the facts of this case. Thus, the judgment of this Court in the case of Bhupendra Murji Shah (supra) would not advance the case of the petitioner.

15. In our view, the petition is devoid of merit and is accordingly dismissed. Time to deposit 20% of the tax demand is extended by four weeks from today.

16. It is made clear that if the amount is not deposited within four weeks from today, the appeal filed by the petitioner, which is pending before the Commissioner of Income Tax (Appeal), shall stand dismissed in view of the default on the part of the petitioner for not

depositing 20% of the tax demand, without further reference to this Court. It is further made clear that no further extension of time would be granted. No order as to costs. Parties to act on the authenticated copy of this order.

(S. G. MEHARE, J.) **(R.D. DHANUKA, J.)**

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