**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2289 OF 2022

KARMAYOGI ANKUSHRAO TOPE SAMARTH SSK LTD.
VERSUS
THE PRINCIPAL COMMISSIONER OF INCOME-TAX AND OTHERS.
...
Mr. S.V. Adwant, Advocate for petitioner.
Mr. Alok Sharma, Advocate for respondent Nos.1 and 2.

**CORAM : MANGESH S. PATIL AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 1st MARCH 2023

P.C.:-

The petitioner, a cooperative society, approached this court under Article 226 of the Constitution of India with the following prayers:-

> "b) Rule may kindly be made absolute by declaring that the order passed by the respondent No.2 on 29th December, 2019, is beyond limitation, illegal and arbitrary, thus be quashed and set aside.
> c) By issuing appropriate writ, the order passed by the respondent No.1 on 28th January, 2022, on the stay petition in the pending appeal, be quashed and set aside."

2. The petitioner contends that it is engaged in the business of manufacture and sale of sugar. The petitioner filed Income-tax return on 28.9.2022 for the financial year 2011-12 for assessment year 2012-13

under Section 139 of the Income-Tax Act, 1961. The petitioner declared its income to the tune of Rs.5,74,466,20/- after claiming deductions, under Sections 80(P)(2)(d), 80-IA(4) and 80G aggregating to Rs. 9,48,42,039/-. The respondent No.2 issued the notices to the petitioner under Section 142(1) of the Income-Tax Act. The petitioner replied to those notices giving detailed explanation. After subjectively convinced with the explanation tendered by the petitioner, the respondent No.2 passed Assessment Order under Section 143(3) of the Income-Tax Act, thereby accepting returns.

3. After scrutiny of assessment, petitioner was served with notice under Section 154 for rectification of completed assessment, desiring to reduce the deduction allowed under Section 80-IA (4). The petitioner submitted detailed objection dated 25.1.2019 and assailed the method of computation adopted by the respondents. The respondents thereafter issued notice dated 15.3.2019 under Section 148 of the Income-Tax Act. The petitioner replied notice and also requested for giving reasons for issuance of notice under Section 148 of the Income-tax Act, 1961. It is the contention of the petitioner that the respondent No.2 was under statutory obligation to furnish the reasons for issuing notices. The petitioner was entitled to raise its objections to the notice based on reasons supplied. The respondent No.2 was under statutory obligation to pass speaking order, however, such statutory requirements were ignored.

4. According to the petitioner, the assessment order dated 29.12.2019 passed by respondent under Section 143(3) r/w. Section 147 of the income Tax Act, 1961 for assessment year 2012-13 is unusual. The

income of the petitioner is erroneously re-assessed to Rs.12,04,98,975/-, followed by the demand notice in Form No.7 under section 156 of the Income Tax Act. Petitioner is called upon to pay a sum of Rs. 3,56,82,330/- within a period of 30 days.

5. The petitioner contends that it approached the appellate authority i.e. Commissioner of Income-Tax (Appeals) Aurangabad-1 challenging assessment order dated 29.12.2019 under Section 246A of the Income-tax Act. On 13.10.2020, the petitioner preferred application for grant of stay. However, the respondent No.1 without considering the nature of the objections raised by the petitioner in the stay petition, passed an order dated 28.1.2022 directing the petitioner to deposit 20% of the amount under demand notice. According to the petitioner, the order is unsustainable in law and contrary to the settled position of law under governing procedure under section 148 of the Income Tax Act.

4. The respondent Nos. 1 to 3, by filing their reply opposed the prayers in the writ petition. It is the contention of the respondents that notice under Section 148 had been issued on 15.3.2019. The assessment order under Section 143(3) r/w. Section 147 of the Act had been passed on 29.12.2019. The petitioner has preferred an appeal before the Commissioner of Income-Tax (Appeal), which is pending consideration. The petitioner had applied before the Principal CIT-1, Nasik for keeping its demand in abeyance vide letter dated 13.10.2020. The petitioner was given opportunity of hearing. The authorized representative of the petitioner i.e. M/s. Shubhda Koppa, Chartered Accountant and Chief Engineer R.D. Pagar attended the hearing and also given written submission. After such hearing, the order impugned in this writ petition has been passed. The application has been partly allowed subject to

deposit of 20% amount under demand notice. Further it has been directed to pay 10% of the demand by 10.2.2022 and rest 10% amount of demand in 4 monthly installments starting from 10.3.2022. The respondents further contend that they have followed the procedure laid down under the Income-Tax Act. No infirmity can be found in the impugned order. As such, they prayed for dismissal of the petition.

6. Mr. S.V. Adwant, learned advocate appearing for the petitioner would submit that the order of assessment dated 29.12.2019 is arbitrary and revolting to the judicial conscience. He would submit that the notice issued by the respondent No.2 under Section 148 of the Income Tax Act dated 5.3.2019 was without providing the reasons to the petitioners. To buttress his submissions, Mr. Adwant relied upon some orders passed by this Court in (***1)*** W.P. No. 671 of 2022 dated 8th February, 2022 in the matter of ***Nirmal Bang Securities Pvt. Ltd. Mumbai Vs. Assistant Commissioner, Income-Tax; (2)*** The order dated 29th October, 2022 in W.P. 3284 of 2019 in the matter of ***Asian Paints Ltd. Vs. Assistant Commissioner***, Income-Tax; (3) The order dated 21.12.2021 in W.P. No. 3554 of 2019 in the matter of Svitzer Hazira Pvt. Ltd. Vs. Assistant Commissioner, Income-Tax. (4) **Aroni Commercials Vs. Assistant Commissioner Income Tax reported in 2014 SCC Online Bom.4719** (5) **Prashant S. Joshi vs. The Income Tax Officer reported in 2010 SCC Online Bom.263.**

8. Having considered the submissions advanced by the learned advocates appearing for the respective parties, this Court finds that the petitioner has preferred a Substantive Appeal under Section 246 of the Income Tax Act and same is pending adjudication before the appellate

authority. The contentions advanced by Mr. S.V. Adwant, learned advocate for the petitioner, thereby assailing the legality and validity of the notice under Section 148 of the Act dated 15.3.2019 and consequential order of assessment dated 29.12.2019 are subject matter of pending appeal before competent Authority. In that view of the matter, it would not be appropriate for this court to deal with those contentions on merit in writ jurisdiction. The petitioner can be relegated to advance such contentions challenging assessment order or demand notice in pending appeal based on law laid down by this court in judgments (Supra). The challenge in this writ petition can be considered only to the extent of order dated 28.1.2022 on stay petition passed by the respondent No.1.

9. Respondent nos. 1 to 3 have filed affidavit in reply. It has been pointed out that the petitioner has presented an appeal under Section 246 of the Income Tax Act before the CIT(A). The petitioner has also approached the Principal CIT (1) Nasik for keeping its demand in abeyance (stay of demand) vide its application dated 13.10.2020. The petitioner was given notices for hearing dated 8.2.2021, 18.1.2022 as well as 27.1.2022. The petitioner availed the opportunity of hearing on given dates. It has been specifically brought to our notice that on 27.1.2022 the petitioner appeared through the authorized representative M/s. Shubhada Koppa, Chartered Accountant and Mr. R.D. Pagar, Chief Accountant. The order sheet is placed before us along with the affidavit in reply. It records that C.A. Shubhada A. Koppa and Chief Accountant Shri R.D. Pagar, argued for stay of impugned notice stating that first appeal is pending before appellate authority. It also records that the order has been passed on consent recorded by the representatives

assessee. The signatures of the Chartered Accountant and Chief Account of the petitioner appear on the order sheet.

10. The petitioner has not disputed the aforesaid facts. It appears that the petition is filed challenging the consent order by raising various legal issues which are subject matter of appeal filed under Section 246A of the Income-Tax Act. The discretion exercised by the authority while passing the impugned order thereby granting stay subject to deposit of 20% of the amount under demand with the facility of installments, cannot be said to be arbitrary, when order is invited by consent. No interference from this court is warranted under Article 226 of the Constitution of India in the facts and circumstances of this case. Resultantly, the writ petition fails and hence, dismissed. However, the petitioner shall be at liberty to make appropriate application to the respondents for extension of time to deposit the amount, as per the impugned orders. If such application is filed, the respondents shall consider the same in accordance with law.

[S.G. CHAPALGAONKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

grt/-