Maria S.

# IN THE HIGH COURT OF BOMBAY AT GOA

## WRIT PETITION NO.44 OF 2023

The Goa Forest Development Corporation,
Through its Managing Director,
A Government of Goa Undertaking, Having office at 1st Lift, 3rd floor, Junta House, Panaji-Goa. … Petitioner

*Versus*

1. Principal Commissioner of Income Tax,
Aayakar Bhavan, Plot No.5, EDC Complex, Patto Plaza, Panaji-Goa

2. Income Tax Officer,
Ward 1 (1, Panaji-Goa. … Respondents

Mr Devidas J. Pangam, Advocate General with Ms Maria S. J. Correia, Additional Government Advocate for the Petitioners.

Mr K. V. Aravind, Senior Standing Counsel for the Revenue Department.

**CORAM:** **M. S. SONAK & BHARAT P. DESHPANDE,JJ.**

**Reserved on:** **8th FEBRUARY 2023**

**Pronounced on:** **14th FEBRUARY 2023**

**JUDGMENT: (*Per. Bharat P. Deshpande, J*).**

**1.** Rule. The Rule is made returnable forthwith. The matter is taken up for final disposal with the consent of both the parties.

**2.** The petitioner-Corporation is challenging the impugned order dated 02.12.2022 passed by respondent no.1 wherein the stay application filed by the petitioner was rejected only on the ground that the petitioner failed to deposit 20% of the disputed demand immediately.

**3.** Heard Shri Devidas J. Pangam, learned Advocate General along with Ms Maria Correia, learned Additional Government Advocate for the petitioner and Mr K. V. Aravind, learned Senior Standing Counsel for the Revenue.

**4.** Shri Pangam would submit that the petitioner received a notice under Section 148 of Income Tax Act dated 30.03,2021 requiring the petitioner to file return of the income for the assessment year 2017-18. Accordingly, on 27.04.2021 returns were filed disclosing loss of ₹18805160/-.

**5.** Shri Pangam would then submit that though notices under Section 143(2) and 142(1) of the Income Tax Act were issued, the staff of the petitioner were not aware of such notices as at the relevant time most of the staff of the petitioner-Corporation was on auction duty and, thereafter, on election duty. The notices were not responded to because of above reasons. The Assessing Officer resorted to best judgment assessment under Section 144 of the Income Tax Act and passed an order on 26.03.2022 under Section 147 r/w Section 144 r/w Section 144B of the Income Tax Act. In the said order the Assessing

Officer considered the income of ₹50084646/- and accordingly levied tax of ₹38690390/-.

**6.** Mr Pangam then would submit that petitioner filed an appeal on 22.04.2022 against the assessment order. Mr Pangam would then submit that demand under Section 156 of Income Tax was issued for the assessment year 2017-18 for a sum of ₹78121750/-. The petitioner then filed an application for stay of such demand until the disposal of appeal by the Commissioner of Income Tax.

**7.** The respondent no.2 refused to consider grant of stay of demand as 20% of the disputed demand was not paid. The petitioner was called upon to pay 20% of the disputed demand. Vide order dated 02.12.2022 respondent no.1 rejected the petitioner's appeal on the sole ground that the petitioner failed to deposit 20% of the disputed demand. The amount of 20% of the disputed demand works out to ₹15624350/-. Vide letter dated 05.12.2022 the petitioner was directed to pay 20% of the disputed demand on or before 13.12.2022 failing which, recovery proceedings would be initiated as per the Income Tax Act. The petitioner, being aggrieved by such orders passed by the respondents, filed present petition with the prayer clauses as set out below:

> *'A. For a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction thereby quashing and setting aside the Impugned Order dated 02.12.2022 passed by the Respondent No.1 bearing reference*

*No.Stay/Pr.CIT/PNJ/2022-23 and the consequential Demand letter dated 05/12/2022, issued by the Respondent No.2 bearing letter No.ITBA/RCV/F/17/2022-23/1047808787(1).*

*B. For an order staying the demand for the sum of Rs.7,81,21,752/-.*

*C. That pending hearing and final disposal of this writ Petition, this Hon'ble Court may be pleased to stay the effect and operation of the Impugned Order dated 01/12/2022 passed by the Respondent No.1 bearing reference No.Stay/Pr.CIT/PNJ/2022-23 as well as the consequential demand letter dated 05/12/2022, issued by the Respondent No.2 bearing letter No.ITBA/RCV/F/17/2022-23/1047808786(1).*

*D. Ex-parte ad interim relief in terms of prayer clause (B).*

*E. In the alternate, for an order remanding the matter to the Respondent No.1 for fresh consideration of the Petitioners communication dated 14/07/2022. For such other and further reliefs that this Hon'ble Court may deem fit and proper.'*

**8.** Shri Pangam then submitted that the bank deposits of the petitioner were wrongfully considered by the Assessing Officer as unexplained income despite such investments being made in the fixed deposits during the year with the banks, out of the grants received from the Government Goa. Similarly, the sale price of the vehicle purchased was also wrongly considered as unexplained expenditure. He would then submit that there are various such amounts which have been considered as unexplained and the same need to be properly explained by the petitioner during the appeal. He then would submit that the petitioner company is owned 100% by Government of Goa and the petitioner highlighted the hardships which it would face in the event the entire demand is not stayed.

**9.** Shri Pangam would then submit that the petitioner is ready and willing to deposit ₹30 lacs at present, within a period of two weeks so that the appeal could be decided on merit.

**10.** Shri Aravind, learned Senior Standing Counsel appearing for the Revenue submitted that since there was no reply received from the petitioner to the Notices, the Assessment Officer considered the case of the petitioner on best assessment judgment. He would submit that the appeal was rightly dismissed since the petitioner failed to deposit 20% of the disputed demand.

**11.** Shri Pangam placed reliance on the decision in Writ Petition No.471 of 2002 along with 3 others writ petitions decided on 30.09.2022 by a coordinate Bench of this Court in which one of us (Bharat P. Deshpande, J) is a Member. In those matters essentially the concern of the petitioners was with regard to refusal of stay to the demand notices. Present matter is also essentially with regard to refusal of stay by the Assessing Officer to the demand notices pending appeal. Issue with regard to financial constraints was raised to make demand of 20% of the disputed demand, which was not considered by the concerned authority. Paragraphs 13 and 14 of the said decision speaks thus:-

*'13. We have heard learned counsel for the parties and with their assistance we have perused the record. On perusal of the orders by which the stay of the demand has been rejected by the Assessing Officer as also by the Principal Commissioner of Income tax, we may observe that in the petitioner's application dated 30.07.2021 the petitioner had averred a categorical case of financial hardship. However, the Assessing Officer rejected the petitioner's application of a stay on the demand, without assigning any reasons. The petitioner accordingly approached the Principal Commissioner praying for stay of the demand, reiterating the specific grounds in that regard contending that the Assessing Officer has not applied his mind to the aspect of financial stringency and therefore the demand needs to be stayed. However, the fate of the petitioner before the Principal Commissioner was not different. Although other issues on merits are considered by the Principal Commissioner, we find that there are no reasons in the context of financial hardship, in both the orders passed by the Principal Commissioner being orders dated 11.08.2021 and order dated 29.12.2021. Thus, the case of the petitioner on financial stringency is not at at all considered in the perspective it ought to have been considered by the Principal Commissioner, after applying his mind to the specific plea as taken by the petitioners in that regard. Such plea was required to be decided by considering the facts and figures from the materials as placed on record, so as to determine by giving reasons as to whether the plea was at all genuine and acceptable.*

*14. It is clearly seen from the decision cited by Mr. Pardiwala in the case of* ***Mumbai Metropolitan Region Development Authority v/s. Deputy Director of Income -tax (Exemption-1)*** *(2015) 273 CTR 317(Bombay) that this Court considering the earlier decisions on such issue as noted by us, has held that the aspect of financial hardship is one of the grounds which is required to be considered by the authority concerned and the authority concerned should briefly indicate whether* *the assessee is financially sound and viable to deposit the amount or the apprehension of the revenue of non-recovery later is correct warranting deposit. We find that at this stage such test is not applied in passing of the impugned orders by the Principal Commissioner who has simplicitor referred to the Assessing Officer's report in rejecting stay on deposit of the tax.'*

**12.** The letter dated 10.05.2022 addressed to the Income Tax Officer by the petitioner reveal the request for grant of stay to the tax demand. It gives details about the amounts which have been considered incorrectly, i.e. bank deposits, the sale price of the vehicle and the interest. However, Assessing Officer in one line rejected such stay application vide order dated 10.60.2022 which reads thus:

'*Since, 20% of the disputed amount is not paid, the request for stay of demand is not considered. Therefore, you are requested to pay 20% of the disputed demand.'*

**13.** The petitioner then approached respondent no.1, i.e the Principal Commissioner of Income Tax before whom the appeal was filed, vide their letter dated 14.07.2022 requesting for grant of stay to the tax demand for the assessment year 2017-2018, giving all the necessary grounds. The stay was rejected by respondent no.1 vide order dated 02.12.2022, which is challenged before this Court along with letter dated 05.12.2022 for demand of 20% of the disputed claim.

**14.** The observations of this Court in the case of ***Tungabhadra Minerals Pvt. Ltd.,*** *in Writ Petition 471 of 2022* (supra) are squarely applicable to the facts and circumstances of the matter in hand. Rejection of such application without giving any reason clearly exhibit non-application of mind and, therefore, the matter needs to be considered in the light of explanation given by the petitioner in both their applications. The concerned authority must apply the principles of natural justice by giving the reasons for rejecting stay applications.

**15.** In the case of ***Kec International Ltd., v/s. B. R. Balakrishna and others***[1], the division Bench of this Court at the Principal Seat while considering stay of demand, laid down some guidelines which are as under:-

> '6...
> *(a) While considering the stay application, the authority concerned will at least briefly set out the case of the assessee.*
> *(b) In cases where the assessed income under the impugned order far exceeds returned income, the authority will consider whether the assessee has made out a case of unconditional stay. If not, whether looking to the questions involved in appeal, a part of the amount should be ordered to be deposited for which purpose, some short prima facie reasons could be given by the authority in its order.*
> *(c) In cases where the assessee relies upon financial difficulties, the authority concerned can briefly indicate whether the assessee is financially sound and viable to deposit the amount if the authority wants the assessee to so deposit.*
> *(d) The authority concerned will also examine whether the time to prefer an appeal has expired. Generally, coercive measures may not be adopted during the period provided by the statute to go in appeal. However, if the authority*

**1** 2001 SCC OnLine Bom 1229

*concerned comes to the conclusion that the assessee is likely to defeat the demand, it may take recourse to coercive action for which brief reasons may be indicated in the order.*
*(e) We clarify that if the authority concerned complies with the above parameters while passing orders on the stay application, then the authorities on the administrative side of the Department like respondent No.2 herein need not once again give reasoned order. '*

**16.** In view of the above decisions and the fact that the Assessing Officer failed to disclose reasons while rejecting stay application and since the appellate authority also failed to consider the stay application and demanded 20% of the disputed demand, considering this limited issue, we are of the opinion that the Principal Commissioner need to re-consider and pass appropriate order as canvassed by the petitioner, by furnishing reasons.

**17.** Instead of a remand to consider the application for waiver that would entail further delay, We were invited to decide on such application based on the material placed and the law as discussed above. Only in the peculiar facts of this case and with consent We have agreed. Considering the facts and figures placed before us, At least 10 % amount must be deposited by the Petitioner. The financial hardships projected by the Petitioner, which is a Government concern must be balnced with the interests of the revenue in public interests.

**18.** Shri Pangam submitted that petitioner is ready and willing to deposit an amount of ₹30 lacs within a period of 2 weeks. We accept such statement and direct the petitioner to deposit ₹30 lacs with the respondent no.1, within a period of 2 weeks. This is less than 10% of the tax demanded. In the facts of the present case and considering the material placed before us, instead of a remand to consider the waiver application, interests of justice would be suitably served if the Petitioner deposits 10% of the demanded amount. Further, the hearing of the appeal on merits could be expedited. In light of above observations, we dispose of the present petition by the following order:

O R D E R

I) Respondent No.1 is directed to hear the petitioner's appeal on merit on the condition that the petitioner shall deposit an amount of ₹30 lacs within a period of 2 weeks from today and the balance to make up 10% of the demanded amount within further two weeks from the date of first deposit. Thus, within four weeks from today, the Petitioner must deposit 10% of the demanded amount with the Respondents. The impugned order on pre-deposit is set aside subject to this condition.

II) In the meantime, and subject to compliance of the above condition of deposit of 10% of the demanded amount, there shall be a stay on the demand notices issued by the respondents.

**19.** We clarify that while considering the above aspects and the view taken by us, the matter on merits was not taken into consideration and all contentions of the respective parties are left open.

**20.** The Rule is made absolute in the above terms.

**21.** Parties shall act based on the authenticated copy of this order.

**BHARAT P. DESHPANDE, J.** **M. S. SONAK, J.**

MARIA SUZANA REBELLO Digitally signed by MARIA SUZANA REBELLO Date: 2023.02.14 17:19:29 +05'30'