17.02.2025
Item Nos. 11
AN/Ct. No. 05

WPA 30773 of 2024

Tirumani Investment Private Limited
vs.
Union of India ors.

Mr. Pranit Bag
Ms. Tanvi Luhariwala
Mr. Aniruddha Dutta
… for the petitioner

Mr. Soumen Bhattacharjee
Mr. Ankan Das
Ms. Shradhya Ghosh
… for the respondents

1. The present writ petition has been filed inter alia challenging the order of attachment dated 05.02.2019 whereby the petitioner's bank account maintained with the Axis Bank, Kolkata Main Branch bearing A/c. No. 915020042489420 had been attached as also for a direction to de-freeze the same. The petitioner also seeks for a specific direction from this Court so as to call upon the respondent authorities to dispose of the appeal filed under Section 251 of the Income Tax Act, 1961 (in short, the said Act) on 11.01.2019 for the Assessment Year 2011-2012.
2. Mr. Bag, learned counsel appearing for the petitioner by drawing attention of this Court to the assessment order issued by the Assessing Officer would submit that although the petitioner had filed a return for a sum of

Rs. 10,69,003/-, the Assessing Officer had determined the same to be Rs. 41,22,19,003/-.

3. Being aggrieved by and dissatisfied with the order, the petitioner had filed the appeal under Section 251 of the said Act.

4. Simultaneously with the filing of the appeal, the petitioner had also filed an application praying for stay of the demand issued under Section 156 of the said Act, on 14.01.2019 before the Deputy Commissioner of Income Tax. Since, the said application for stay of demand was rejected by an order dated 24.01.2019 by observing that the petitioner shall be entitled to stay subject to payment of 20% of the disputed demand, the petitioner claims to have filed a further stay application before the Principal Commissioner of Income Tax on 29.01.2019, inter alia, praying for stay of the entirety of the disputed demand. Such application was also disposed of by an order dated 14.02.2019 with a direction upon the petitioner to make a payment of at least 20% of the demand immediately.

5. It appears that the attachment order had already been issued by the Deputy Commissioner of Income Tax on 05.02.2019 which was subsequently communicated to the petitioner on 19.02.2019. The aforesaid order dated 05.02.2019 also forms the subject matter of challenge in the present writ petition.

6. Mr. Bag, would submit that the above assessment is a high pitched assessment and the petitioner having preferred an appeal within the period of limitation, the demand raised by the respondents on the basis of such high pitched assessment in respect of Assessment Year 2011-2012 ought not to have been enforced. In support of his submission, Mr. Bag relies upon a judgment delivered by the Division Bench of this Hon'ble Court in the case of ***Jankalyan Vinimay Pvt. Ltd. vs. Deputy Commissioner of Income-tax & Ors.*** reported in **2023 SCC Online Cal 2563**. He would also submit that the appeal has been unnecessarily kept pending for which the petitioner is suffering irreparable loss, injury and prejudice. Appropriate directions should be issued for expeditious disposal thereof.
7. Mr. Bhattacharjee, learned counsel appearing for the respondent authorities would submit that the order of attachment has been passed in the year 2019 and for more than six years there has been no challenge to such attachment order. The order of rejection of the stay application was duly communicated to the petitioner. The petitioner had chosen not to challenge the same and has approached this Court in December, 2024. No relief should be afforded to the petitioner till such time the appeal is disposed of.
8. Having heard the learned counsel for the respective parties and considering the materials on record, I may

notice that returned income/loss filed by the petitioner, was Rs. 10,69,003/-. The Assessing Officer by his order dated 24.12.2018 had determined revised income of Rs. Rs. 41,22,19,003/-. The petitioner has preferred an appeal from the aforesaid order within the stipulated period of limitation. According to the petitioner, since the aforesaid assessment is a high pitched assessment, the petitioner had prayed for stay of the entire demand raised by the respondent authorities under Section 156 of the said Act. Record would reveal that not only the Deputy Commissioner of Income Tax but the Principal Commissioner of Income Tax had in the year 2019 itself rejected the petitioner's application for staying the entirety of the demand and the petitioner was called on to make immediate payment of 20% of the demand already raised. It is true that in case where a high pitched assessment is made ordinarily when an appeal is preferred within the stipulated period of limitation, the demand may not to be enforced till disposal of the appeal. The Hon'ble Division Bench of this Court in the case of ***Jankalyan Vinimay*** (supra) has taken the above view.

9. In the present case, however, taking note of the fact that there is no explanation for the delay, for the petitioner approaching this Court after four and half years from the date of rejection his application for stay of the entirety of the demand and the order attaching

his bank account, I am of the view that the petitioner is not entitled to the stay of the order of attachment at this stage.

10. Be that as it may, since the appeal is pending for more than four and half years, I of the of the view that the appellate authority should expeditiously hear out and dispose of the appeal not later than six weeks from the date of communication of this order upon giving reasonable opportunity of hearing to the petitioner. It is made clear that in the interregnum, if any amount is credited to the petitioner's bank account which is the subject matter of attachment, the same shall be retained with the bank to the credit of the appeal.

11. With the above observations and directions, the instant writ petition stands **disposed of**, however, with no order as to costs.

All parties to act on the basis of the server copy of this order duly downloaded from the official website of this Court.

(Raja Basu Chowdhury, J.)