

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE GOPINATH.P.

FRIDAY, THE 08TH DAY OF MAY, 2020/18TH VAISAKHA, 1942

W.P(C) NO.9782 OF 2020

PETITIONER:

ANIL KUMAR.S. , AGED 48 ,
S/O. LATE. SUKUMARAN,
MANAGING PARTNER, KAIPPALLIL JEWELLERS,
VARIETH CENTER PLAZA, NANGIARKULANGARA,
ALAPPUZHA DISTRICT - 690 513.

BY ADVOCATES:

SRI. AYYAPPAN SANKAR
SMT. S. HRIDYA (H.248)

RESPONDENTS:

1. COMMISSIONER OF INCOME TAX (APPEALS) ,
OFFICE OF THE COMMISSIONER OF INCOME TAX,
KOTTAYAM - 686 501.
2. ASSISTANT COMMISSIONER OF INCOME TAX,
OFFICE OF THE ASSISTANT COMMISSIONER OF
INCOME TAX, CIRCLE - ALAPPUZHA, A.N.PURAM,
ALAPPUZHA PIN : 688 011

BY ADVS.

THIS WRIT PETITION HAVING COME UP FOR ADMISSION ON 08.05.2020,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner suffered an order of assessment under Section 143(3) of the Income Tax Act. He has preferred Ext.P7 appeal before the 1st respondent against Ext.P4 order of assessment. That appeal is pending. In the meanwhile, the petitioner filed a petition before the Assessing Officer under Section 220(6) of the Income Tax Act, seeking a stay of recovery of the amounts under the assessment order (through Ext.P10 dated 04.03.2020). The assessing officer instead of deciding the application under Section 220(6) on its merits has directed the petitioner to deposit 20% of the demand for a consideration of the application preferred by the petitioner. It is challenging this communication that this writ petition has been filed.

2. Mr. Ayyappan Sankar, the learned counsel appearing for the petitioner would contend that the demand raised in the assessment order is without any basis and that his client is not liable to pay any amount and that the liability as been fixed wrongly upon him. Sri.Jose Joseph, the learned Standing Counsel appearing for the Department

would contend that the assessment order is completely legal and justified and that there were substantial cash deposits by the petitioner as a result of which, the Department had invoked the provisions of Section 69 of the Act during the course of assessment. The learned Standing Counsel would therefore contend that the condition imposed by the assessing officer for deposit of 20% is completely justified and should not be interfered with.

3. It is not proper or appropriate for this Court to consider the merit of the rival contentions as the statutory appeal is pending before the Appellate Authority.

4. The learned counsel for the petitioner has contended that the imposition of a condition of deposit of 20% is extremely harsh considering the present situation of lock-down etc. on account of COVID-19. He states that the petitioner has to support his staff and meet other expenses of the business without there being any income generated out of the business. In the circumstances, he prays that the condition be either completely waived or substantially reduced.

5. On a consideration of the facts and circumstances, I am of the opinion that the petitioner can be asked to deposit a sum equivalent to 10% of the demand in Ext.P4 assessment order in two equal installments. The petitioner shall deposit one half of the amount equivalent to 10% within three weeks from today. He should deposit the balance one half on or before 14.08.2020. If these deposits are made, further recovery proceedings shall be kept in abeyance till the disposal of Ext.P7 appeal.

With these observations and directions this writ petition is disposed of.

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**GOPINATH.P
JUDGE**

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APPENDIX

PETITIONER'S EXTS:

EXT. P1 - TRUE PHOTOCOPY OF NOTICE DATED 27.05.2019 ISSUED FROM THE OFFICE OF THE 2ND RESPONDENT U/S 142(1) OF THE INCOME TAX ACT, 1961.

EXT. P2 - TRUE PHOTOCOPY OF HEARING NOTICE DATED 26.08.2019 ISSUED FROM THE OFFICE OF THE 2ND RESPONDENT.

EXT. P3 - TRUE PHOTOCOPY OF 2ND NOTICE DATED 14.11.2019 ISSUED FROM THE OFFICE OF THE 2ND RESPONDENT U/S 142(1) OF THE INCOME TAX ACT, 1961.

EXT. P4 - TRUE PHOTOCOPY OF ASSESSMENT ORDER NO: ITBA/AST/S/143(3)/2019-20/1022672543(1) DATED 19/12/2019 U/S 143(3) OF THE INCOME TAX ACT, 1961, ISSUED BY THE 2ND RESPONDENT.

EXT. P5 - TRUE PHOTOCOPY OF DEMAND NOTICE NO: ITBA/AST/S/156/2019-20/1022672616(1) DATED 19/12/2019 ISSUED BY THE 2ND RESPONDENT U/S 156 OF THE INCOME TAX ACT, 1961.

EXT. P6 - TRUE PHOTOCOPY OF PENALTY NOTICE NO:ITBA/PNL/S/271AAC(1)/2019-20/1023152140(1) DATED 26/12/2019 ISSUED BY THE 2ND RESPONDENT.

EXT. P7 - TRUE PHOTOCOPY OF FIRST APPEAL AGAINST EXHIBIT-P4 ASSESSMENT ORDER FILED ON 25/01/2020 BEFORE THE 1ST RESPONDENT U/S 246A OF THE INCOME TAX ACT, 1961.

EXT. P8 - TRUE PHOTOCOPY OF REMINDER LETTER NO: ITBA/COM/F/17/2019-20/ 1025019658(1) DATED 11/02/2020 TO EXHIBIT-P5 DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT.

EXT. P9 - TRUE PHOTOCOPY OF APPLICATION FOR STAY DATED 19/02/2020 FILED BEFORE THE 2ND RESPONDENT (U/S 220(6) OF THE INCOME TAX ACT, 1961) TO STAY THE PROCEEDINGS PURSUANT TO EXHIBIT-P5 DEMAND NOTICE PENDING DISPOSAL OF EXHIBIT-P7 FIRST APPEAL.

EXT. P10 - TRUE PHOTOCOPY OF LETTER NO: ITBA/RCV/F/107/2019-20/1026077261(1) DATED 04/03/2020 ISSUED FROM THE OFFICE OF THE 2ND RESPONDENT DIRECTING

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PAYMENT OF 20% OF THE DISPUTED DEMAND IMMEDIATELY
FOR CONSIDERATION OF THE REQUEST IN EXHIBIT-P9
APPLICATION FOR STAY