

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K. JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

TUESDAY, THE 7th DAY OF APRIL, 2020/18th CHAITHRA, 1941

W.P.(C). TMP-30 OF 2020

PETITIONER:

Niraamaya Retreats Pvt Ltd, Pulinkudi Mullur P.O
Kovalam, Thiruvananthapuram – 695527,
Represented by its Chief Financial Officer - Mohan D Aiyar

By Adv. Sri. V. V. Asokan (Sr.)
Adv. Sri. V. V. Nandagopal Nambiar

RESPONDENTS:

1. Assistant Commissioner of Income Tax,
Officer of Assistant Commissioner of Income Tax
Aayakar Bhavan, Ist Floor Kawdiar P.O, Thiruvananthapuram – 695003
2. Commissioner of Income Tax (Appeals),
Office of the Commissioner of Income Tax (Appeals),
Aayakar Bhavan, 2nd Floor, Kawdiar P.O, Thiruvananthapuram – 695003
3. Principal Commissioner of Income Tax
Office of the Principal Commissioner of Income Tax,
Aayakar Bhavan, 3rd Floor, Kawdiar P.O, Thiruvananthapuram – 695003
4. HDFC Bank Limited, Kenton Towers, DPI,
Near Kalabhavan Theatre, Vazhuthacaud, Trivandrum, Kerala 695014
Represented by its Branch Manager
5. Andhra Bank
RB Towers, Azhakulam, Muttackad, Trivandrum, Kerala 695014
Represented by its Branch Manager
6. State Bank of India
Fathima Building, Pachalloor Road, Vizhinjam, Trivandrum, Kerala 695521
Represented by its Branch Manager

By Sri. Christopher Abraham, SC, Income Tax Department

This Writ Petition having come up for admission on 07/04/2020, the Court on the same day passed the following:-

A.K. JAYASANKARAN NAMBIAR, J.

&

SHAJI P. CHALY, J.

WP(C). TMP-30 OF2020

Dated this the 7th day of April, 2020

J U D G M E N T

A.K. Jayasankaran Nambiar, J.

Against an order of assessment under the Income Tax Act, the petitioner preferred an appeal before the First Appellate Authority, the 2nd respondent herein, and during the pendency of the appeal, the petitioner also approached the 1st respondent with a petition under Section 220(6) of the Income Tax Act for a stay of recovery pending disposal of the appeal. It would appear that the 1st respondent, on the application preferred by the petitioner, granted a stay of recovery of the amounts confirmed by the assessment order, on condition that the petitioner paid an amount equal to 20% of the tax demand. Not satisfied with the same, the petitioner preferred a fresh petition under Section 220(6) before the 1st respondent. The said petition however did not result in any favourable order to the petitioner. It is the case of the petitioner that, although he thereafter approached the 2nd respondent with a stay petition seeking for a stay of recovery pending disposal of the appeal, the same was not considered by the 2nd respondent, and instead, the 1st respondent dismissed the said application in the light of the earlier order passed by him. The petitioner would submit that the 2nd respondent Appellate Authority has since heard the appeal on 5.3.2020, and orders are awaited in the appeal. In the meanwhile, however, the respondents initiated garnishee proceedings and attached the bank accounts of the petitioner maintained with respondents 4 to 6 banks. It is

also stated that an amount of Rs.1,51,00357/-was withdrawn from the said accounts towards the tax liability of the petitioner. We are told that the amount of Rs.1,51,00357/-represents approximately 11% of the tax demand confirmed against the petitioner. The prayer in the writ petition, at this stage, is essentially for a lifting of the attachment orders over the bank accounts of the petitioner maintained with respondents 4 to 6 banks, and to stay further recovery proceedings till such time as final orders are passed by the 2nd respondent in the appeal pending before him.

2. We heard Sri.V.V.Asokan, the learned senior counsel duly assisted by Sri.Nandagopal Nambiar, the learned counsel for the petitioner and also Sri.Christopher Abraham, the learned Standing Counsel for the respondents.

3. On a consideration of the facts and circumstances of the case, as also the submissions made across the bar, we find that inasmuch as the respondents have already recovered an amount of Rs.1,51,00357/- from the petitioner through garnishee proceedings, and the appeal preferred by the petitioner against the assessment order has been heard finally by the 2nd respondent Appellate Authority, who is expected to pass orders in the appeal in the near future, there need not be a further recovery effected from the petitioner at this stage. Accordingly, while upholding the recovery already effected by the respondents for the time being, we deem it to be sufficient for safeguarding the interests of the revenue pending disposal of the appeal by the 2nd respondent.

4. Accordingly, the writ petition is disposed, by directing the respondents to lift the attachment over the bank accounts of the petitioner maintained with respondents 4 to 6 banks forthwith, with a further direction to the 2nd respondent to pass final orders in the appeal within an outer time limit of two months from the

date of receipt of a copy of this judgment. It is also made clear that till such time as orders are passed by the 2nd respondent, as directed and the order communicated to the petitioner, further proceedings for recovery of amounts confirmed against the petitioner by the assessment order in question shall be kept in abeyance. The petitioner shall also be permitted to operate the bank accounts maintained with respondents 4 to 6 during the said period.

The writ petition is disposed as above.

**A.K.JAYASANKARAN NAMBIAR
JUDGE**

**SHAJI P. CHALY
JUDGE**

prp/7/4/2020