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HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.684 OF 2012

Rajasthani Sammelan Sarvoday
Balika Vidyalaya and another. ..Petitioners
-versus-
Assistant Director of Income Tax
Exemption I(1) and others. ..Respondents

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Mr.Soli E. Dastur, Senior Advocate with Mr.Madhur Agrawal i/by M/s
Federal & Rashmikant, for the Petitioners.
Mr.Vimal Gupta, for the Respondents.
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**CORAM : DR. D.Y.CHANDRACHUD
&
M.S.SANKLECHA, JJ.**

Date : MARCH 26, 2012.

P.C.:

1 In these proceedings the Petitioners have challenged two orders dated 9 March 2012 and 14 March 2012 of the Director of Income Tax (Exemption) on applications for stay of demand. By the first of those orders, the Petitioners are directed to pay 50% of the total demand of Rs. 1.56 crores of which an amount of Rs.35 lacs was to be paid in the month of March and the balance in installments. By the second order, the Petitioners have been directed to pay an amount of Rs.30 lacs on or before 26 March 2012 while the balance was stayed until 31 July 2012 or until disposal of the appeal, whichever is earlier.

2 The First Petitioner is a public charitable trust registered under the Bombay Public Trusts Act, 1950 and is also registered under

Sections 12A and 80G of the Income Tax Act, 1961. The First Petitioner conducts 10 educational institutions where over 12600 students are enrolled. It has employed 350 persons as members of the staff. It has been averred that there are about 2200 students who are charged a subsidized fee of Rs.10/- per student per month. During the financial year 2008-09, the Petitioners entered into four agreements for obtaining donations to establish an International Board School, SSC School, Management & Post Graduate Institute and a Sports Complex. Donations of Rs.2.72 Crores were received in the financial year. The First Petitioner has been granted an exemption as a charitable trust for over 50 years until the Assessment Year 2008-09. For Assessment Year 2009-10, the First Petitioner filed its return of income declaring a NIL total income. The assessment for Assessment Year 2009-10 had to be completed by 31 December 2011. On Friday, 23 December 2011, the First Petitioner received a notice from the Assessing Officer to show cause as to why an exemption under Section 11 should not be denied on the ground that receipt of donations by the First Petitioner amounted to a commercial activity. The First Petitioner submitted its reply on 26 December 2011. The Assessing Officer passed an order under Section 143(3) on 30 December 2011 by which the total income of the First Petitioner was computed at Rs.3.51 Crores. The Assessing Officer held that the donations received by the First Petitioner are not voluntary in nature, but are commercial.

3 The First Petitioner has filed an appeal against the order of assessment on 13 January 2012 before the Commissioner of Income Tax (Appeals). On 17 January 2012 an application for stay was filed before the Assessing Officer under Section 220(6). The application for stay of demand was heard on 8 February 2012 by the First Respondent. On 27 February 2012 the First Petitioner received a letter dated 10 February

2012 of the First Respondent, even before the application for stay could be disposed of, requiring the First Petitioner to pay the demand within three days, failing which coercive proceedings, it was stated, would be adopted. The Petitioner was called upon to produce evidence of payment of the demand of Rs.1.55 Crores. The First Petitioner filed an application on 29 February 2012 before the Director of Income Tax, the Second Respondent to these proceedings. On 14 March 2012 the First Petitioner received a copy of the order of the Second Respondent dated 9 March 2012 requiring the First Petitioner to pay 50% of the demand; of which an amount of Rs.35 lacs was to be paid by March 2012 and the balance in installments. The First Petitioner submitted a further representation on 12 March 2012 and again on 14 March 2012 highlighting the nature of its activities and its financial position. On 14 March 2012 the Second Respondent has directed the Petitioner to make payment of an amount of Rs.30 lacs on or before 26 March 2012, while the balance was stayed until 31 July 2012 or till the disposal of the appeal, whichever is earlier.

4 The parameters for the grant of a stay of demand have been laid down in the judgment of a Division Bench of this Court in **KEC International Ltd. v/s B.R.Balakrishnan**¹. Recently, this Court had occasion to deal with the issue in a judgment delivered in the case of **UTI Mutual Fund v/s Income Tax Officer**² decided on 14 March 2012.

5 In the present case, as in several cases which have come up before this Court and particularly in the month of March, it is evident that the Assessing Officer and the Director of Income Tax have both had scant regard to the parameters which have been laid down by this Court for disposal of stay applications. No reasons are indicated. The orders do not contain a prima facie evaluation of the issues which would arise in appeal.

1 [2001] 251 ITR 158 (Bom)

2 WP(L) No.606/2012

In **UTI Mutual Fund** (supra), this Court was constrained to issue a cautionary observation to the effect that Assessing Officers and Appellate Authorities, when they dispose of applications for stay, act as quasi judicial authorities and not merely as tax gatherers of the Revenue. While they have a duty of protecting the interests of the Revenue, they need to mitigate the hardship to the Assessee and applications for stay must be considered objectively. In the present case the Assessee continues to have a registration under Section 12A, which has not been revoked. The Assessee has received the benefit of exemptions on the basis that it engages in a charitable purpose within the meaning of Section 2(15) until it has been denied the benefits for Assessment Year 2009-10.

6 Learned counsel appearing for the Revenue submits that under Section 11(1)(d) income in the form of voluntary contributions made with a specific direction that it shall form a part of the corpus of the trust or institution, is exempted. In the present case, according to the Revenue, the donations which were received cannot be regarded as voluntary contributions.

7 At this stage, we are not inclined to express a final or conclusive view as to whether, the First Petitioner has fulfilled the requirement of Clauses (a) and (d) of Section 11(1). The appeal filed by the First Petitioner is pending before the Commissioner of Income Tax (Appeals). It is evident that the First Petitioner has continuously received the benefit of exemption upto Assessment Year 2008-09, a position which is now sought to be altered for the first time in Assessment Year 2009-10. Every Assessment Year constitutes a unit in itself and the principles of res-judicata do not strictly apply. Equally, it has been held by the Supreme Court that when a fundamental basis permeates through the case of the Assessee, that would certainly be a relevant matter which has to be borne

in mind by the Assessing Officer.

8 Having heard the learned counsel appearing for the parties, we are of the view that the First Petitioner does have serious issues to be urged before the Commissioner of Income Tax (Appeals) in appeal. This is a case where the Assessing Officer while exercising the jurisdiction under Section 220(6) and the Director of Income Tax ought to have granted a complete stay of demand. The Assessee has highlighted the nature of its activities in several applications filed in support of the plea for stay and also explained its financial position. None of this has been taken into account while disposing of the application for stay.

9 Accordingly, we quash and set aside the impugned orders dated 9 March 2012 and 14 March 2012 and direct that pending the disposal of the appeal filed by the Assessee for Assessment Year 2009-10 before the Commissioner of Income Tax (Appeals), there shall be a stay of demand and no coercive steps shall be taken against the Assessee for the recovery of the demand in the amount of Rs.1.56 Crores.

10 The Petition is, accordingly, disposed of. There shall be no orders as to costs.

(Dr.D.Y.Chandrachud, J.)

(M.S.Sanklecha, J.)