

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO. 526 OF 2016

Piramal Fund Management Pvt. Ltd.

.. Petitioner

v/s.

Deputy Commissioner of Income Tax
Mumbai & Ors.

.. Respondents

Mr. J.D. Mistri, Senior Counsel a/w Niraj Seth, Atul Jaswani for the
petitioner

Mr. N.C. Mohanty for the respondent

**CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.**

DATED : 17th MARCH, 2016.

PC.

1. This petition under Article 226 of the Constitution of India has been filed primarily against the refusal of the Assessing Officer to accept the petitioner's application for stay dated 17th February, 2016.

2. The Assessing Officer for the Assessment Year 2012-13 had by order dated 19th January, 2016 raised a demand of Rs.52.08 crores. Being aggrieved by the assessment order, the petitioner had filed an appeal on 24th February, 2016 to the Commissioner of Income Tax (Appeals). Thereafter, the petitioner approached the Assessing Officer

on 18th February, 2016 *inter alia* with its application for stay in terms of Section 220(6) of the Income Tax Act, 1961. This was along with an application dated 17th February, 2016 for stay of penalty proceedings. The Assessing Officer accepted the stay application for demand and also application for stay of penalty proceedings. However, the Assessing Officer gave acknowledgement only of application for stay of the penalty proceedings but did not provide an acknowledgment of having accepted and received the stay application dated 17th February, 2016. This action on the part of the Assessing Officer led the petitioner to file this petition on 23rd February, 2016 and also serve it upon the Assessing Officer on 23rd February, 2016 itself. Immediately thereafter, the Assessing Officer provided an acknowledgment to the stay application in terms of Section 220(6) of the Act dated 17th February, 2016 on 23rd February, 2016 to the petitioner.

3. The Assessing Officer has filed an affidavit-in-reply wherein he has stated that in view of the on going discussion with the Officers of the petitioner, there was no occasion for him to refuse to acknowledge the stay application. He further states that the petitioner should have filed its application for stay at the ASK center located in Aayakar Bhavan, where the Income Tax Department has made arrangements for

acceptance of *tapal* addressed to all the officers located at Aayakar Bhavan.

4. We find that in his affidavit, the Assessing Officer states all applications are to be filed only with the ASK centre, yet he gives acknowledgement of the application for stay of penalty when handed over to him. Further, he also gives the acknowledgement on 23rd February, 2016 of the stay application dated 17th February, 2016 received by him on 18th February, 2016. This acknowledgement on 23rd February, 2013 is given immediately on the Writ Petition being served upon him. Thus, the explanation offered in the affidavit is at variance with his conduct. Thus, the affidavit is not acceptable.

5. Mr. Mohanty, the learned Counsel for the Revenue contends that in any case, no coercive proceedings were resorted to by him. Thus, there was no mala-fide. This is hardly any consolation as in the absence of the party having an acknowledged copy of the stay, the party would never know when the coercive proceedings would commence and at all time be on tenterhooks.

6. We find this conduct on the part of the Assessing Officer to

accept a stay application and not immediately give acknowledgement of its receipt is unacceptable. The least that is expected of an civil servant is to be fair and civil. In the absence of the above, his conduct is not one becoming of an Officer belonging to the prestigious Indian Revenue Service. The least that is expected of an Officer is that when a person files an application / letter, which is accepted by him, an acknowledgement should be forthwith given to the party filing the application or letter. In case he refuses to accept the letter he should endorse on the letter / application the reason why it is not being accepted with a line or two for the refusal to accept. In case he does accept it and give an acknowledgment he can deal with the applications / letters as is appropriate in accordance with law. We believe that what has happened in this case is an aberration. However, the Chief Commissioner of Income Tax would ensure that his Officers do not behave in such an high handed and unfair manner, not expected of civil servants.

7. Be that as it may, the stay application is still pending decision. Normally, we would have let the Assessing Officer decide the same. However, looking at the manner in which the petitioner has been dealt with by the Assessing Officer in regard to its stay application dated 17th

February, 2016, it would be in the interest of justice that the application for stay filed by the petitioner be heard by another Officer different from the Assessing Officer i.e. respondent no.1 herein. The Officer to deal with the petitioner's stay application dated 17th July, 2016 is to be selected / nominated by the Revenue.

8. At this stage, Mr. Mohanty, learned Counsel for the Revenue states that the stay application would now be disposed of by Additional Commissioner of the Income Tax, i.e. respondent no.2 in the present petition.

9. Accordingly, the respondent no.2 is directed to deal with the petitioner's application for stay in accordance with law.

10. The Petition is disposed of in the above terms. No order as to costs.

(A.K. MENON, J.)

(M.S. SANKLECHA, J.)