

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

WRIT PETITION NO.911 OF 2016

Tulsidas Trading Pvt. Ltd.

.. Petitioner.

Vs.

Tax Recovery Officer-13, Mumbai & Ors.

.. Respondents.

Mr. Bharat L. Gandhi i/b Viraj Khandpile for the petitioner.
Mr. P.C. Chhotaray for the respondents.

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

DATED : 20TH JULY, 2016

P.C. :

1. This petition under Article 226 of the Constitution of India seeks that :

(a) Notice dated 10th February, 2016 issued by the Tax Recovery Officer certifying that the sum of Rs.7.19 crores plus interest under Section 220(2) of the Income Tax Act, 1961 (the 'Act') is due from the petitioner be quashed and set aside; and

(b) The Commissioner of Income Tax (Appeals) [CIT (A)] before whom the appeal from the Assessment Order dated 20th March, 2015 is pending be directed to give an early hearing of the appeal to the petitioner.

2. This petition was filed on 30th March, 2016. The impugned notice dated 10th February, 2016 has been issued long after the order dated 11th May, 2015 of Assessing Officer rejecting the stay application of the petitioner under Section 220(6) of the Act. In the petition as filed there is no challenge to the order dated 11th May, 2015 rejecting the petitioner's application for stay. On the aforesaid facts being pointed out, Mr. Gandhi, learned counsel for the petitioner seeks time to amend the petition to challenge the order dated 11th May, 2015 of the Assessing Officer.

3. Mr. Chhotaray, learned counsel appearing for the revenue opposes the same and submits that petition as filed is not bonafide. This according to him is evident from the fact that the prayer in the petition is for early hearing of the appeal by the CIT (A). However, when the CIT (A) had scheduled the hearing of the appeal, the petitioner is seeking time again and again. The CIT (A) had fixed the hearing on 20th April, 2016. The petitioner sought time as its Director was out of town. Thereafter a hearing of appeal was fixed on 17th May, 2016. At that time also the petitioner sought time as its Chartered Accountant was on summer vacation. The CIT (A) then scheduled the hearing of the appeal on 26th May, 2016. In response, the petitioner again sought time on the ground that the Chartered Accountant is on

summer vacation as stated in the affidavit in reply. Thereafter, Mr. Chhotaray tenders across the bar a communication dated 11th July, 2016 from the petitioner's to the CIT (A) recording the fact that hearing fixed on 11th July, 2016 cannot be attended as its Chartered Accountant is pre-occupied in other professional assignment and therefore requests that appeal be adjourned to a date sometime in August 2016.

4. This conduct on part of the petitioner filing the petition interalia seeking early hearing of its appeal before the CIT (A) and at the same time when the appeal is fixed for hearing by the CIT (A), the petitioner is seeking adjournment on frivolous grounds indicating that the petitioner is not serious about attending the hearing. It appears to be time delaying tactics and abuse of the legal process. In fact on 11th July, 2016 the last adjournment sought by the petitioner was to fix the hearing of the appeal in August 2016. The very fact that the petitioner has been seeking adjournment time and again before the CIT (A) and filing the petition in this Court seeking early hearing of its appeal is an abuse of the process of law.

5. In the above view the petitioner is directed to pay costs of Rs.20,000/- by Pay Order to "the Principal Commissioner of Income Tax-13, Mumbai" on or before 4th August, 2016. This

payment of cost on or before 4th August, 2016 is a condition precedent for the CIT (A) hearing the petitioner's appeal. The petitioner would satisfy the CIT (A) that the above cost of Rs.20,000/- has been paid.

6. Petition dismissed.

(A.K. MENON,J.)

(M. S. SANKLECHA,J.)