

(1997) 11 AP CK 0074

In the Andhra Pradesh High Court

Case No : Writ Petition No. 30202 of 1997 18 November 1997 A.Y. 1988-89
1989-90

BHOJA REDDY

APPELLANT

Vs

COMMISSIONER OF INCOME TAX

RESPONDENT

Date of Decision : 18-11-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Income Tax Act, 1961 — Section 220, 256

Citation : (1998) 149 CTR 61

Hon'ble Judges : P. Venkatarama Reddy, J

Bench : Division Bench

Advocate : L. Venkateshwar Rao, for the Assessee, J.V. Prasad, for I.T., for the Revenue, for the Appellant;

Judgement

P. Venkatarama Reddy, J.

Heard both the counsels at the stage of admission.

2. This writ petition is filed seeking for a direction to the 2nd respondent not to take coercive steps for recovery of interest of Rupees 5,62,188 levied u/s 220(2) of the Income Tax Act for the assessment years 1988-89 and 1989-90 pending the disposal of R.C. 8/1994 on the file of this court.

3. R.C. 8/1994 relates to the assessment year 1988-89. It is stated that a similar reference application is pending for the year 1989-90. As the Reference Court has no inherent or incidental power to grant stay of recovery of tax or other dues, the learned counsel for the petitioner submits that the petitioner is constrained to file this petition under article 226 of the Constitution. The Supreme Court in Commissioner of Income Tax Vs. Bansi Dhar and Sons, : held that the jurisdiction u/s 256 of the Income Tax Act is advisory in nature and notwithstanding the reference, the appeal before the Tribunal must be deemed to be still pending and the Tribunal retains its jurisdiction to grant stay as part of its

incidental or ancillary power. It was further observed that :

"In an appropriate case if the assessee feels that a stay of recovery pending disposal of the reference is necessary or is in the interest of justice, then, the assessee is entitled to apply before the appellate authority to grant a stay until disposal of the revision by the High Court or until such time as the appellate authority thought fit". It was also pointed out that in case the appellate authority committed a jurisdictional error or acted improperly in exercise of its jurisdiction, the appellate authority's order can be corrected by the High Court under articles 226 and 227 of the Constitution.

4. In view of this pronouncement of the Supreme Court, we are of the view that the petitioner should first move the Income Tax Appellate Tribunal for the grant of stay of the demand representing the interest levied u/s 220(2). The learned counsel expressed a doubt whether the power of the Tribunal to grant stay could be extended to the collection of interest, in view of the fact that the issue as regards the propriety of collection of interest as such is not the subject-matter of reference before the High Court. We do not think that there is anything in the decision of the Supreme Court which limits the power of the Tribunal only to stay the recovery of tax but not the interest due thereon.

5. It is to be noted that the interest is linked up with tax and if the reference is answered in favour of the assessee and the tax demand is set aside, the interest levied u/s 220(2) will be consequentially wiped out. That being the case, we are not in a position to appreciate as to how there could be bar against the power to stay the recovery of interest. No doubt, the Supreme Court employed the wording 'tax' in the aforementioned decision. But, from that, it does not follow that the Supreme Court wanted to limit the power of the Tribunal to grant stay only in respect of tax but not interest which is consequential. The expression 'tax' used by the Supreme Court must be understood contextually. The Supreme Court was not concerned with interest; hence, the said word was not used. What we have to see is whether the ratio laid down by the Supreme Court applies. As pointed out by the Supreme Court, the power to grant stay is incidental and ancillary to appellate jurisdiction and the exercise of such incidental and ancillary power will certainly take within its fold the power to grant stay of recovery of interest as well.

6. We, therefore, see no ground to entertain this writ petition at this stage. It is open to the petitioner to file an application before the Income Tax Appellate Tribunal seeking stay of recovery of interest and if such application is filed, we hope that the same will be disposed of expeditiously by the Tribunal.

7. The writ petition is dismissed with the above observation.

Petition dismissed.