(2014) 08 BOM CK 0175

In the Bombay High Court

Case No : Writ Petition No. 7293 of 2014

Gera Realty Estates APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 11-08-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 220(6)

Citation : (2015) 274 CTR 358 : (2014) 368 ITR 366 : (2015) 231 TAXMAN 582

Hon'ble Judges : M.S. Sanklecha, J;G.S. Kulkarni, J

Bench : Division Bench

Advocate : Mihir Naniwadekar, Advocate for the Appellant; Vimal Gupta, Senior Advocate instructed by Padma Divakar, Advocate for the Respondent

Judgement

1. This petition under article 226 of the Constitution of India challenges the order dated June 30, 2014, passed by the Commissioner of Income-tax (Appeals) ("the CIT(A)"). By the impugned order dated June 30, 2014, the petitioner''s application for stay of assessment order March 27, 2014, in its pending appeal for the assessment year 2011-12 was dismissed. By the impugned order dated June 30, 2014, the Commissioner of Income-tax (Appeals) has dismissed the stay application in a pending appeal after recording that though he has inherent power to consider the stay application yet the same will not be considered as an administrative measure. This, according to him, is to avoid multiple stay application before different authorities.

2. The jurisdiction of the Commissioner of Income-tax (Appeals) to deal with application for stay of the order in appeal before it is inherent in it as an appellate authority. The exercise of this jurisdiction is to be exercised on examining the order in appeal before the Commissioner of Income-tax (Appeals). This jurisdiction to stay the order in appeal is in fact admitted in the impugned order dated June 30, 2014. As against the above, the jurisdiction with the Assessing Officer of staying the demand under section 220(6) of the Income-tax

Act, 1961 ("the Act"), and that of the Commissioner of Income-tax to stay the demand, is on different considerations, i.e., including other factors over and above the order. The Assessing Officer and the Commissioner do not stay the order in appeal but only stay the demand issued consequent to the order which is in appeal. This only to ensure that the assessee is not deemed to be a assessee in default. Therefore, the Commissioner of Income-tax (Appeals) ought not to have confused his jurisdiction as an appellate authority with that of either the Assessing Officer under section 220(6) of the Act or to that of the Commissioner of Income-tax in his administrative capacity. Mr. Naniwadekar, learned counsel appearing for the petitioner, informs us that no application for stay of the demand has been filed either before the Assessing Officer or the Commissioner of Income-tax by the petitioner.

3. In view of the above, we set aside the impugned order dated June 30, 2014. The Commissioner of Income-tax (Appeals) is directed to dispose of the stay application as expeditiously as possible and preferably within three weeks from today.

4. In the meantime, the respondent-Revenue will not adopt any coercive proceedings against the petitioner till the disposal of its stay application by the Commissioner of Income-tax (Appeals) and for the period of two weeks from the date of the communication of the order passed by the Commissioner of Income-tax (Appeals). However, we make it clear that in case the Commissioner of Income-tax (Appeals) is of the view that looking at the nature of dispute before him, the appeal of the petitioner itself could be disposed of on the merits, he is free to do so. Accordingly, writ petition is disposed of, with the above directions, with no order as to costs.

