(2001) 05 BOM CK 0025

In the Bombay High Court

KEC International Ltd. APPELLANT

Vs

B.R. Balakrishnan and Others RESPONDENT

Date of Decision : 31-05-2001

Acts Referred:

Citation : (2001) 170 CTR 415 : (2001) 72 TTJ 714

Hon'ble Judges : V.C. Daga, J;S.H. Kapadia, J

Bench : Full Bench

Advocate : J. D. Mistry with S. Shah and Rajesh Shah and Co., for the Assessee, R. V. Desai, with P. S. Jetley and J. P. Deodhar, instructed by H. D. Rathod, for the Revenue, for the Appellant;

Judgement

Rule. The respondents waive service. By consent, rule made returnable forthwith.

In a large number of matters, this court finds orders being passed perfunctorily by the department only with the idea of effecting recovery before March 31, though such orders could have been passed earlier in detail and after recording proper reasons. This is one of those cases.

2. The assessing officer passed the assessment order on 5-2-2001, u/s 143(3) for the assessment year 1998-99 (previous year ending on 31-3-1998). Pursuant to the said assessment order, a notice of demand of Rs. 12.93 crores including interest was issued on 5-2-2001, u/s 156 of the Act. On receipt of the notice of demand, the assessee filed a stay petition on 23-2-2001, before the assessing officer and requested him to stay the demand in order to enable the petitioner-assessee to file an appeal with the Commissioner. The stay petition was rejected by the assessing officer on 5-3-2001. Being aggrieved by the rejection of the stay application filed by the assessee, the matter was carried to the second respondent on the administrative side vide letter dated 13-3-2001. By the impugned order, respondent No. 2 dismissed the stay petition.

For the sake of clarity, the impugned order is quoted hereinbelow :

"I am directed to refer to your application for stay of demand dated 13-3-2001, and to say that the matter was discussed by the Commissioner of Income Tax, MC-I, Mumbai, with your representative Shri Haresh G. Buch and Shri Yogesh Thar, C. As. from B. S. Mehta and Co. and Shri R. Ramji, Financial Controller of the company. The Commissioner, MC-I, Mumbai, declines to interfere in the matter as the company did not agree to make even part payment of 25 per cent of the existing demand."

3. At the outset, it may be mentioned that the impugned order is passed by respondent No. 2 on the administrative side. It does not give any reason. However, it is important to bear in mind that in this case even the assessing officer has not given any reasons for rejecting the stay application. As a result of the impugned order, a garnishee notice has been issued u/s 226(3) to the Central Bank of India, J. B. Nagar Branch, Andheri (East), Mumbai. About 500 workers have not been paid salary because of the garnishee notice. This is the consequence of an order being passed without giving any reasons. Hence, we intend to lay down certain parameters which are required to be followed by the authorities in cases where a stay application is made by an assessee pending appeal to the first appellate authority.

Parameters :

(a) While considering the stay application, the authority concerned will at least briefly set out the case of the assessee.

(b) In cases where the assessed income under the impugned order far exceeds returned income, the authority will consider whether the assessee has made out a case for unconditional stay. If not, whether looking to the questions involved in appeal, a part of the amount should be ordered to be deposited for which purpose, some short prima facie reasons could be given by the authority in its order.

(c) In cases Where the assessee relies upon financial difficulties, the authority concerned can briefly indicate whether the assessee is financially sound and viable to deposit the amount if the authority wants the assessee to so deposit.

(d) The authority concerned will also examine whether the time to prefer an appeal has expired. Generally, coercive measures may not be adopted during the period provided by the statute to go in appeal. However, if the authority concerned comes to the conclusion that the assessee is likely to defeat the demand, it may take recourse to coercive action for which brief reasons may be indicated in the order.

(e) We clarify that if the authority concerned complies with the above parameters while passing orders on the stay application, then the authorities on the administrative side of the department like respondent No. 2 herein need not once again give reasoned order.

The above parameters are not exhaustive. They are only recommendatory in nature.

Subject to the above, the impugned order is set aside with a direction to the assessing officer to dispose of the stay application preferred by the assessee in accordance with law. Consequent upon our setting aside the impugned order, the above garnishee notice is also set aside.

The writ petition is accordingly allowed with no order as to costs.

Issuance of certified copy expedited.

Parties to act on an ordinary copy of this order, duly authenticated by the associate of this court.