(2023) 11 KL CK 0173

In the High Court Of Kerala

Case No : Writ Appeal No.1972 Of 2023

MKD Taluk Govt. Employees Co Operative Society Ltd.	APPELLANT
Vs	
Additional/Joint/Deputy/Assistant Commissioner Of Income Tax/Income Tax Officer	RESPONDENT

Date of Decision : 15-11-2023

Acts Referred:

Citation : (2023) 11 KL CK 0173

Hon'ble Judges : Dr. A.K.Jayasankaran Nambiar, J;Dr. Kauser Edappagath, J

Bench : Division Bench

Advocate : Harisankar V. Menon, Meera V.Menon, R.Sreejith, K.Krishna, Parvathy Menon, P.G Jayashankar

Final Decision : Disposed Of

Judgement

Dr. A.K.Jayasankaran Nambiar, J

1. Against Ext.P1 assessment order for the assessment years 2020-2021 under the Income Tax Act, the appellant had preferred Ext.P2 appeal, Ext.P3 application for stay and Ext.P4 delay condonation application pending disposal of the appeal. When recovery steps were initiated by the respondents during the pendency of the statutory appeal and stay application, the appellant approached the writ court through WP(C).No.32812 of 2023, which was disposed by a learned Single Judge by judgment dated 13.10.2023 relegating the appellant to the alternate remedy of appeal and directing the Appellate Authority to dispose the delay condonation application, stay application or the appeal within a period of two months. In the appeal before us, the appellant impugns the said judgment of the learned Single Judge solely on the ground that while disposing the Writ Petition, the learned Single Judge did not grant a stay of recovery proceedings till such time as the First Appellate Authority considered the delay condonation application/ stay application/appeal as directed by the learned Single Judge.

2. We have heard Sri.Harisankar V. Menon, the learned counsel for the appellant

and Sri.P.G.Jayasankar, the learned Standing counsel for the Income Tax Department.

3. In our view, since the learned Single Judge had relegated the appellant to the alternate remedy before the statutory authority it was incumbent upon the learned Judge to protect the appellant from recovery proceedings pending disposal of the application by the respondent appellate authority. Accordingly, we modify the impugned judgment of the learned Single Judge to the limited extent of clarifying that pending disposal of the delay condonation application, stay application or appeal whichever is earlier, by the appellate authority, the recovery proceedings against the appellant for recovery of the amounts confirmed against him by Ext.P1 assessment order shall be kept in abeyance. Save for this limited modification, the rest of the directions in the impugned judgment are not interfered with.