(2010) 06 J&K CK 0016

In the Jammu And Kashmir High Court

Case No : LPAOW No. 53 of 2009

Pankaj Dutta APPELLANT

Vs

Income Tax Officer and Another RESPONDENT

Date of Decision : 01-06-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 220, 246

Citation : (2010) 235 CTR 110

Hon'ble Judges : Aftab H. Saikia, C.J;Jai Pal Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Aftab H. Saikia, C.J.—Heard Mr. Sachin Sharma, learned Counsel for the appellant as well as Mr. D.S. Thakur, learned Counsel for

respondent No. 1.

2. This Letters Patent Appeal has been preferred against the judgment and order dated 6.11.2009 passed by the Writ Court in OWP No.

338/2009 while disposing of OWP No. 259/2009 along with other connected petitions by the aforesaid common judgment, holding that since the

appeal preferred by the appellant was pending before the Commissioner of Income Tax (Appeals), Jammu and the appellant had also moved an

application for stay of the demand before the Income Tax Officer/respondent No. 1, due to availability of the efficacious remedy, the writ

jurisdiction could not be invoked.

3. The appellant herein is an assessee, and, being an individual Unit, has filed the return as regards his income under the Income Tax Act (for short

'the Act'). The return so submitted by the appellant, was re-assessed by the

Income Tax authorities, particularly respondent No. 1. Being

aggrieved by it, the appellant moved to the Commissioner of Income Tax, Appellate Authority and, in the meantime, he also preferred an

application u/s 220(6) of the Act for stay of the assessment order before the Assessing Authority.

4. Having duly considered his application for stay, the Assessing Authority, without passing any stay order as sought for, granted relief to the

appellant by way of directing him to pay 50% of the demand pending disposal of the appeal.

5. Being dissatisfied with the action of the respondent No. 1 not granting the stay of the demand, the appellant initiated writ proceedings through

OWP No. 338/2009.

6. The Writ Court, having heard learned Counsel for the parties, including the Revenue, came to the finding that, since the appellant had already

preferred an appeal before the Appellate Authority and also as the appellant was directed to pay 50% of the demand as an interim relief, in the

backdrop of the present facts and circumstances of the case, the invocation of extra ordinary writ jurisdiction was not warranted and, accordingly,

the writ petition was dismissed. Hence, this LPA before this Court.

7. It will be apt and necessary for the sake of convenience and for disposal of this appeal to refer to the provisions of Section 220(6) of the

Income Tax Act, 1961.

220(6). Where as assessee has presented an appeal u/s 246, the Assessing officer may, in his discretion and subject to such conditions as he may

think fit to impose in the circumstances of the case, treat the assessee as not being in default in respect to the amount in dispute in the appeal, even

though the time for payment has expired, as long as such appeal remains undisposed of.

8. A close reading of the above provision of law would clearly indicate that the assessing officer in his discretion only can pass necessary orders till

the disposal of the appeal. Since the power to be exercised by the Assessing Authority is purely discretionary and admittedly the main appeal is

also pending before the Appellate Court for its disposal, we are of the considered view that the discretion which was exercised by the Assessing

Authority/respondent No. 1 given in the facts and circumstances of the case, was in accordance with the established principles of law, equity and

justice. According to us, it was not a fanciful or arbitrary exercise of discretion.

9. It is accepted that exercise of discretionary power can be interfered with by the High Court only if the order passed is violative of some

fundamental or basic principles of justice and fair play or suffers from any patent or flagrant error.

10. In view of the facts situation so projected in this appeal, it may be safely held that refusal of granting of stay order as sought for, did not infringe

or contravene any legal right or, to say, fundamental right enforceable by the appellant under Article 226 of the Constitution of India.

11. That being so, we do not find any merit in this appeal and the same stands dismissed.

12. No costs.

