(2018) 04 CHH CK 0283

In the Chhattisgarh High Court

Case No : WPT No. 74, 75, 76, 77 of 2018

Shahjahan Begum APPELLANT

Vs

State Of Chhattisgarh RESPONDENT

Date of Decision : 23-04-2018

Acts Referred:

Citation : (2018) 04 CHH CK 0283

Hon'ble Judges : SANJAY K. AGRAWAL, J

Bench : Single Bench

Advocate : Syed Ishhadil Ali, Romir S. Goyal, Naushina Afrin Ali

Final Decision : Disposed of

Judgement

1. Since common question of law and fact is involved in these writ petitions, they are heard together and are being disposed of by this common order.

2. The applications filed by the petitioners for stay of recovery of disputed demand has been rejected by respondent No. 3 by order dated 15.01.2018

(Annexure- P/1). Against the said rejection, revision / review petitions were preferred by the petitioners but they have been rejected by respondent

No. 1 by order dated 23.03.2018 (Annexure â?" P/2) without assigning any reason and without passing any reasoned and speaking order, aggrieved

against which these writ petitions have been preferred by the petitioners.

2. Learned counsel appearing for the petitioners would submit that 20% of the disputed amount has already been deposited and, therefore, the

impugned orders passed are unsustainable and bad in law and are liable to be set aside.

3. On the other hand, Mrs. Naushina Afrin Ali, learned counsel appearing for the respondents â?" revenue, would oppose the submissions made by

learned counsel for the petitioners and would support the orders impugned.

4, I have heard learned counsel for the parties, perused the impugned orders and also went through the records with utmost circumspection.

5. The Assigning Officer has rejected the applications for stay simply stating that the request of the balance demand cannot be accepted at present

and the said applications have been rejected without assigning any reason. This Court in the matter of M/s Aarti Sponge & Power Ltd. v. The

Assistant Commissioner of Income Tax & Others1, decided on 10.04.2018 indicated the procedure to be followed by the Assigning Officer as under :-

â??18. In my opinion, the said question is no longer res integra and it has been well settled by a decision of the Bombay High Court in the matter of

KEC International Ltd. v. B.R. Balakrishnan and others2 in which S.H. Kapadia, J, as then His Lordship was speaking for the Bombay High Court,

while considering the similar issue has laid down the following guidelines: -

â??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

1 WPT Nos. 59/2018 & 60/2018

2 2001 SCC OnLine Bom 1229 followed by the authorities in cases where a stay application is made by an assesee 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.â??

19. The aforesaid guidelines have been followed later-on again by the Bombay High Court in the matter of UTI Mutual Fund v. Income Tax Officer

19(3)(2) and others3 in which Dr. D.Y.

3 2012 SCC OnLine Bom 390 Chandrachud, J (as then His Lordship was) while following the decision rendered in KEC International Ltd. (supra)

again held some more guidelines as under: -

â??These are, we may say so with respect, sage observations which must be borne in mind by the assessing authorities. Consistent with the

parameters which were laid down by the Division Bench in KEC International and the observations in the judgment in Coca Cola4, we direct that the

following guidelines should be borne in mind for effecting recovery :

1. No recovery of tax should be made pending

(a) Expiry of the time limit for filing an appeal;

(b) Disposal of a stay application, if any, moved by the assessee and for a reasonable period thereafter to enable the assessee to move a higher forum,

if so advised. Coercive steps may, however, be adopted where the authority has reason to believe that the assessee may defeat the demand, in which

case brief reasons may be indicated.

2. The stay application, if any, moved by the assessee should be disposed of after hearing the assessee and bearing in mind the guidelines in KEC

International;

3. If the Assessing Officer has taken a view contrary to what has been held in the preceding previous years without there being a material change in

facts or law, that is a relevant consideration in deciding the application for stay;

4. When a bank account has been attached, before withdrawing the amount, reasonable prior notice should be furnished to the assessee to enable the

assessee to make a representation or seek recourse to a remedy in law;

5. In exercising the powers of stay, the Income Tax Officer should not act as a mere tax gatherer but as a quasi judicial authority vested with the

public duty of protecting the interest of the Revenue while at the same time balancing the need to mitigate hardship to the assessee. Though the AO

has made an assessment, he must objectively decide the

4 Coca Cola India P. Ltd. v. Addl. CIT, (2006) 285 ITR 419 application for stay considering that an appeal lies against his order: the matter must be

considered from all its facets, balancing the interest of the assessee with the protection of the Revenue.â??

6. Reverting to the facts of the present case, it appears that Assigning Officer has not adopted the correct procedure in deciding the stay applications

of the petitioners and has not followed the guidelines as stated by Bombay High Court in KEC International Ltd. (supra) and in UTI Mutual Fund

(supra) and also the decision rendered by this Court in M/s Aarti Sponge & Power Ltd. (supra).

7. In view of aforesaid discussion, the impugned orders dated 15.01.2018 (Annexure â?" P/1) and 23.03.2018 (Annexure â?" P/2) are hereby set

aside and the matter is remitted to the Assigning Officer to consider the stay applications afresh in light of the guidelines as stated by the Bombay

High Court and followed by this Court in M/s Aarti Sponge & Power Ltd. (supra) and pass a reasoned and speaking order within two weeks from the

date of receipt of certified copy of this order after hearing the parties in light of the observations made for deciding the applications for grant of stay of

the disputed demand.

8. Also, till the decision of the stay applications, no coercive steps shall be taken against the petitioners.

9. With the aforesaid observations, the writ petitions are disposed of. No order as to cost(s).

