IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 4TH DAY OF SEPTEMBER, 2015

BEFORE

THE HON'BLE MR.JUSTICE RAM MOHAN REDDY

WRIT PETITION NOS. 29258-29259 OF 2015 (T-IT)

BETWEEN:

M/S MOOKAMBIKA ASSOCIATES
NO.14, LAKSHMI COMPLEX
3RD CROSS, JOURNALIST COLONY
BENGALURU-560 002
REP.BY IT'S PARTNER
SRI.T.V.PRABHU

...PETITIONER

(BY SRI. M.V.SESHACHALA SENIOR COUNSEL
A/W SRI. ARAVIND V CHAVAN, ADV.)

AND:

1. ASSISTANT COMMISSIONER
OF INCOME TAX
CENTRAL CIRCLE 2(1)
C.R.BUILDINGS,
QUEENS ROAD,
BENGALURU-560 001.

2. PRINCIPAL COMMISSIONER
OF IMCOME-TAX-5
1ST FLOOR

C.R.BUILDINGS
QUEENS ROAD
BENGALURU-560 001

3. TAX RECOVERY OFFICER-5
IMCOME TAX DEPRTMENT
RANGE-4, 4TH FLOOR
UNIITY BUILDING (ANNEX)
MISION ROAD
BENGALURU-560 002

...RESPONDENTS

THESE WRIT PETITIONS ARE FILED UNDER ARTICLES 226 & 227 OF CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DTD:20.04.2015, FOR THE ASSESSMENT YEAR 2006-2007 AND ORDER DTD:20.04.2015 FOR THE ASSESMENT YEAR 2007-08, BOTH PASED BY THE SECOND RESPONDENT, PRODUCED ANNEXURE-E & FAND DIRECT THE RESPONDENTS TO GIVE THE ASESSEE AN APPORTUNITY OF HEARING AND PASS AN ORDER AFRESH BY CONSIDERING THE GROUNDS RAISED IN THE APPLICATION FOR WAIVER FILED BY THE ASSESSEE U/S 220(2A)J OF THE ACT, IN ACCORDANCE WITH LAW & ETC.,

THESE WRIT PETITIONS COMING ON FOR PRILIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

O R D E R

On 27.8.2015 the following order was passed:

"Petitioner, a partnership firm with the object of carrying on business of real estate did not file within time its return for the assessment years 2006-2007 and 2007-2008, whence, income tax authorities conducted a search of the assessee's premises on 06.01.2009 under Section 132 of the Income Tax Act, 1961 ('Act' for short) followed by a notice under Section 153(c) whereafter on 20.09.2010 petitioner filed return of income for the assessment year 2006-2007 and 2007-2008 declaring total income of ₹1,05,38,750/- for the assessment year 2006-2007 and ₹1,56,00,000/- for the assessment year 2007-2008 inter alia stating that the assessee had not commenced trading business, but purchased immovable properties during the assessment year 2006-07, however did not disclose the source of consideration for purchase of the immovable properties. The return for the year 2006-2007 was accepted under Section 143(3) of the 'Act', while the

return for the assessment year 2007-2008 income when assessed at ₹2,06,00,000/- on 30.12.2010 made a demand for ₹1,26,75,366/-. The Prl. Commissioner for Income Tax issued notice dated 20.04.2015 demanding ₹63,79,085/- as interest levied under Section 220(2) of the Act for the assessment year 2007-2008.

The assessee filed an application on 16.03.2015 requesting waiver of interest under Section 220(2) whereafterwards report was called from the Assessing Officer which when filed disclosed that assessee did not make payment of the demand after assessment was completed, but went in appeal and further that it was only after taking coercive action, by attaching the bank account and properties of the assessee, payment of ₹15,00,000/- was made on 11.9.2014 and ₹1,11,75,366/- on 20.01.2015, and the assessee did not cooperate during the recovery of tax despite having extended ample opportunities. Prl. Commissioner of Income Tax-V declined to accept the cause shown for hardship to waive

interest under Section 220(2) and rejected application. Hence this petition.

After having heard Sri M.V.Seshachala, learned Senior Counsel for petitioner, hearing is adjourned to 03rd September 2015 to secure further instructions."

2. Today learned Senior counsel submits that petitioner suffered genuine hardship hence the challenge to the rejection of petitioner's claim for waiver of interest under Section 220(2) of the Income-tax Act, 1961 by orders of even date 20.4.2015 Annexures-E and F for the assessment years 2006-07 and 2007-08, respectively.

3. As noticed supra, a law abiding citizen is required to follow the rule of law by filing income tax returns within the time stipulated since taxes are an essential element of the economy and well being of the country. If this is kept in mind, petitioner, a partnership firm, did not submit its returns for the year

2006-07 and 2007-08 within the time stipulated but did so only after the machinery provided under the Income Tax Act was put into force i.e. a search conducted and notice issued, pursuant to which returns were filed on 20.9.2010. The conduct of the petitioner speaks volumes of its commitment to rule of law. The fact that returns submitted when accepted, petitioner was required to pay tax of ₹74,74,229/- for the assessment year 2006-07 and ₹2,06,00,000 for the assessment year 2007-08. Petitioner did not make the payments immediately thereafter but did so only after coercive steps were taken by attaching the Bank accounts and property of the petitioner, whence ₹35 lakhs was paid on 8.5.2014 and the balance of ₹75,21,573/- on 20.1.2015 for the assessment year 2006-07, while for the assessment year 2007-08 ₹15 lakhs was paid on 11.9.2014 and ₹1,11,75,366/- on 20.1.2015. Despite the laxity on the part of the Department in the matter of recovery of the taxes by reason of which petitioner was

in possession of the amounts due and payable as tax for almost ten years from the assessment year 2006-07, yet again speaks volumes of the conduct of the petitioner in the matter of payment of taxes.

4. If regard is had to the aforesaid facts and material dates, the contention that petitioner suffers from hardship hence entitled to waiver of interest under Section 220(2) of the Income Tax Act is far from acceptance. "Hardship" when pressed into service must be genuine and must smack of a conduct of a worthy citizen. In the facts and circumstances hardship cannot be comprehended in favour of the petitioner. Suffice it to state that the Prl. Commissioner of Income Tax Act-V, Bangalore was fully justified in declining waiver of interest at the request of the petitioner.

5. The orders impugned cannot be characterized as perverse or arbitrary calling for interference in

exercise of extraordinary writ jurisdiction under Article 226 of the Constitution.

Petitions devoid of merit are rejected.

Sd/-
JUDGE

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