IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRD DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICEM.H.S. ANSARI

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 1360 of 2005,1361 of 2005,1362 of 2005 and 1404 of 2005

1.W.P.NO.1360 OF 2005

Between:

M/s. Pavani Structurals Private Limited, flat No. 302, Pavani Capitol, Khairtabad, Hyderabad. Rep. by its Managing Partner Mr. R. Narsimha Reddy, S/o. R. Ram Reddy, Aged about 49 Years .

..... PETITIONER

AND

1 The Commissioner of Income Tax (Central), Central Circle, Shakar Bhavan, Basheerbagh, Hyderabad.

2 The Assistant Commissioner of Income Tax, Central Circle, Shakar Bhavan, 3rd Floor, Basheerbagh, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to pass an order or writ especially in the nature of Writ of Mandamus declaring the

order of the Income Tax Appellate Tribunal in S.P.No. 160/H/2004 and the notice dated 28-01-2005 issued by the Respondents as arbitrary and unsustainable under law and pass such other orders

2.W.P.NO.1361 OF 2005

Between:

M/s Pavani Estates, Flat No. 302, Pavani Capitol, Khairtabad, Hyderabad, Rep. by its Managing Partner Mr. R. Narsimha Reddy S/o R. Ram, Reddy, Aged 49 years.

..... PETITIONER

AND

1 The Commissioner of Income Tax (Centtral), Central Circle,
Shakar Bhavan, Basheerbagh, Hyderabad.
2 The Assistant Commissioner of Income Tax, Central Circle - 4,
Shakar Bhavan, 3rd Floor, Basheerbagh, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to pass an order or writ especially in the nature of Writ of Mandamus declaring the order of the Income Tax Appellate Tribunal in S.P.No. 163/H/2004 and the notice dated 28-1-2005 issued by the Respondents to the petitioner's Bankers as arbitrary and unsustainable under law and pass such other order(s)

3.W.P.NO.1362 OF 2005

Between:

M/s.Pavani Housing & Finance, flat No.302, pavani capitol, Khairtabad, Hyderabad. rep.by its Managing partner, Mr.R.Narsimha Reddy, S/o.R.Ram Reddy,

..... PETITIONER

AND

1 The Commissioner of Income Tax (Central), Central Circle,
Shakar Bhavan, Basheerbagh, Hyderabad.
2 The Assistant Commissioner of Income Tax, Central Circle- 4,
Shakar Bhavan, 3rd floor Basheerbagh, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to pass an order or writ especially in the nature of writ of Mandamus declaring the order of the Income Tax Appellate Tribunal in S.P.No.161/H/2004 and the notice dated 28-01-2005 issued by the Respondents to the petitioner's bankers as arbitrary and unsustainable under law and pass such other order(s) as this Hon'ble court deems fit and proper in the circumstances of the case.

4.W.P.NO.1404 OF 2005

Between:

M/s.Pavani Housing & Finance, flat No.302, pavani capitol, Khairtabad, Hyderabad. rep.by its Managing partner, Mr.R.Narsimha Reddy, S/o.R.Ram Reddy,

..... PETITIONER

AND

1 The Commissioner of Income Tax (Central), Central Circle,
Shakar Bhavan, Basheerbagh, Hyderabad.
2 The Assistant Commissioner of Income Tax, Central Circle- 4,
Shakar Bhavan, 3rd floor Basheerbagh, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to pass an order or writ especially in the nature of writ of Mandamus declaring the order of the Income Tax Appellate Tribunal in S.P.No.162/H/2004 and the notice dated 28-01-2005 issued by the Respondents to the petitioner's bankers as arbitrary and unsustainable under law and pass such other order(s) as this Hon'ble court deems fit and proper in the circumstances of the case.

Counsel for the Petitioners (In all the Writ petitions): MR.S.RAVI

Counsel for the Respondents (In all the Writ Petitions): MR.J.V.PRASAD

The Court at the admission stage made the following:

COMMON ORDER (Per the Hon'ble Sri Justice MHS Ansari)

Heard learned counsel for the respective parties.

Keeping in view the nature of relief prayed for and also having considered the facts to which a brief reference shall be made hereinafter, we are inclined to dispose of the instant Writ Petition at this stage without calling upon the respondents to file their counter affidavit and accordingly we may at the outset clarify that any observations made in this judgment or order shall not prejudicially affect the respondents nor the averments made in the affidavit filed in support of the instant Writ Petition or the additional affidavit filed this day in Court shall be construed as having been admitted by the respondent authorities. It is thus, clarified that the averments made in the respective affidavits of the petitioner are not admitted by the respondents.

The petitioner has questioned the demand notice dated 28-01-2005 whereby, the petitioner was required to pay forthwith the amount specified therein and action has been taken under Section 226 (3) of the Income Tax Act calling upon the Manager, Union Bank of India, Khairatabad, Hyderabad/Bharat Overseas Bank, Hyderabad, to pay forthwith the amounts specified therein due from the petitioner.

It is not in dispute that the appeal filed by the petitioner against the orders of the assessing authority and the Revisional Authority are pending before the learned Income Tax Appellate Tribunal (for short 'I.T.A.T.'). It is also not in dispute that the appeals have been heard as long back as on 27-8-2004 and judgments are awaited.

From the order of the learned Tribunal dated
29-10-2004 we find that the petitioner assessee had sought stay of collection of outstanding demand pending disposal of the appeals. The said prayer was rejected vide order dated
6-2-2004 on the ground that hearing of the appeal shall be expedited. However, on the day when the appeal was listed for hearing, it is seen from the said order of I.T.A.T., that the case could not be heard and was adjourned. Meanwhile assessing authority issued garnishee notice to the petitioner's bankers whereupon assessee once again filed stay petition before the learned

Commisioner of Income Tax (for short 'C.I.T.') praying for lifting of the bank attachment. Learned C.I.T. allowed the said prayer and withdrew the attachment notice with a direction to the assessee to pay the outstanding demand in instalments. The petitioner, however, not satisfied with the said orders, moved learned I.T.A.T. with a request to stay collection of outstanding demand. Learned I.T.A.T. considered the submissions of learned counsel for the assessee and also the Departmental Representatives and after having noticed, the submissions of the learned Departmental Representatives that the A.O. has not taken any coercive measures in these appeals and "hence there is no need for passing a fresh order". Learned I.T.A.T. considering those facts and circumstances opined that there was no merit in the contention of the assessee and directed the assessee to pay instalments as directed by the I.T.A.T. in its order dated 6-5-2004. In the additional affidavit filed into Court today, we noticed that byu the aforesaid order dated 6-5-2004, a conditional order was passed granting restricted stay. It would be appropriate to extract the relevant portion which reads as under:

> "Thus to the extent indicated above, restricted stay is granted so the assessee up to 30th June after which payment of instalments to be paid by all the assesses would get continued in and from the month end of July 2004 provided the Department does not ask for adjournment from the hearing fixed for 9th June 2004. It is superfluous for us to say that if the assessee would ask for adjournment from the hearing fixed for 9-6-2004 the instalment payment to be paid by the assessee would get restored in and from the said month of June 2004 end."

Although submissions have been made that adjournments have been obtained on behalf of the department which is disputed by the learned counsel for the 1st respondent, we are not inclined to go into those controversies. What is material is the fact that the appeals have been heard by the learned I.T.A.T. and pronouncement of judgments are awaited. In such view of the matter more particularly keeping in view the fact that learned D.R. has submitted before the learned I.T.A.T. that no coercive measures would be taken in the appeals pending before I.T.A.T. by the A.O., we are inclined to dispose of the Writ Petition with direction to withdraw the notice dated 28-01-2005 under Section

226 (3) of the Income Tax Act, 1961, issued to the Manager Union Bank of India, Khairatabad, Hyderabad/Bharat Overseas Bank, Hyderabad, and not to take any coercive steps until pronouncement of the judgment by the learned I.T.A.T. Thereafter it shall be open to the respondent authorities to affect recoveries in accordance with law depending upon the result of the appeal.

With directions as above, the Writ Petitions stand disposed of. No order as to costs.

M.H.S.ANSARI, J

Dated: 03-02-2005.

T. CH.SURYA RAO, J

Hsd

Note: Issue copy on priority basis.

B/o

Hsd

Asst. Registrar.

To

1 The Commissioner of Income Tax (Central), Central Circle, Shakar Bhavan, Basheerbagh, Hyderabad.

2 The Assistant Commissioner of Income Tax, Central Circle, Shakar Bhavan, 3rd Floor, Basheerbagh, Hyderabad.

3. 2 C.D. copies