

(2023) 11 KL CK 0214

High Court Of Kerala

Case No: Writ Appeal No. 2004 Of 2023

Sb College Staff Co Operative
Society Limited

APPELLANT

Vs

Commissioner Of Income Tax
(Appeals)

RESPONDENT

Date of Decision: Nov. 21, 2023

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

Bench: Division Bench

Advocate: O.D.Sivadas, Jose Joseph

Final Decision: Disposal Of

Judgement

Dr.Kauser Edappagath, J.

1. The petitioner in WP(C).No. 32164 of 2023 is the appellant herein aggrieved by the judgment dated 19.10.2023 in the Writ Petition. The brief facts necessary for disposal of this Writ Appeal are as follows:

2. The appellant had impugned Ext.P1 assessment order before this Court in the Writ Petition when confronted with recovery steps for recovery of the amounts confirmed against it by the assessment order. It was the case of the appellant that against Ext.P1 assessment order it has preferred Ext.P3 appeal and Ext.P4 stay petition for the assessment year 2018-2019 under the Income Tax Act. The apprehension of the appellant was that even before consideration of the stay petition there would be recovery steps initiated by the respondents for recovery of the amounts confirmed against the appellant by Ext.P1 assessment order.

3. The learned Single Judge who considered the matter directed the respondents to consider and pass orders on the stay petition if it was not possible to finally hear the

appeal expeditiously. The learned Single Judge, however, did not grant a stay of recovery proceedings pending disposal of the stay petition by the respondents. It is for this limited relief that the appellant is before us through the present appeal.

4. We have heard Sri. O.D. Sivadas, the learned counsel for the appellant and Sri. Jose Joseph, the learned Standing counsel for the Income Tax Department.

5. In our view, since the learned Single Judge had relegated the appellant to the alternative remedy before the statutory authority it was incumbent upon the learned Judge to protect the appellant from recovery proceedings pending disposal of the petition 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 stay petition or appeal whichever is earlier by the appellate authority, the recovery proceedings against the appellant for recovery of the amounts confirmed against it 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.