

## SetCom Chairman couldn't direct a particular course of action to be taken during pendency of application

**Summary – The High Court of Karnataka in a recent case of Bidar Nirmiti Kendra., (the Assessee) held that where prior to taking matter in appeal by assessee, bank account was attached for tax recovery in excess of prescribed minimum limit which was required to be deposited by petitioner, same was to be treated as high handed collection by revenue**

### Facts

- The petitioner was a development agency. The revenue generated to the said organization was assessed to income tax by the third respondent-Income Tax Officer.
- An order of accepting the assessment of the third respondent ITO was passed by the second respondent Commissioner (Appeals).
- According to petitioner even before the matter could be taken up in the appeal, the confirmation order passed by the second respondent was given effect to. The respondent ITO attached the *amount standing* in the account of the petitioner with fourth respondent Bank by issuing notice dated 28-03-2018. Consequently, an amount of Rs. 24.10 crores was recovered as against 15 per cent and 40 per cent which were required to be recovered as against order of each assessment year in accordance with the rules governing for payment of statutory deposit to maintain the appeal. According to the petitioner, the said amount would be in a range of Rs. 7.64 crores which indicated that the third respondent had high handedly collected an excessive amount of Rs. 16.46 crores, thereby causing hurdle to day-to-day functioning of the petitioner, inasmuch, as the petitioner rendering the institution to the level of not having funds to pay the salary of its employees and to take up development activities for which the said income is generated through Government schemes.
- In this writ petition the sum and substance of the dispute is whether the third respondent Income Tax Officer was entitled to recover the entire tax which was assessed by him immediately after the order passed by him was confirmed by the Commissioner (Appeals) without waiting for appeal period which is statutorily provided under the Act as contemplated in section 253 (3).

### Held

- The sum and substance of the multiple judgments clearly support the contention of the petitioner that the third respondent - ITO has acted beyond the scope of the provision of the Act in high handed manner and recovered the amount in excess of prescribed minimum limit which is required to be deposited by the petitioner, while challenging the order of Commissioner (Appeals).
- The respondents have miserably failed to defend the illegal act committed by the third respondent in high handedly recovering the assessed amount. Despite the fact that statutorily he is prevented from doing so which is fortified by several judgments of various High Courts and Apex Court. In that view of the matter only thing this Court can understand is the pathetic incompetence of the officer

either in understanding the legal provisions which is borne out from the book or in understanding the judgment, which governs the law with reference to the manner of recovery. The conduct of third respondent is nothing but causing harassment to the assessee. In that view of the matter this Court finds the amount of Rs. 15.82 crore which is recovered by third respondent is in excess of his right in the fact situation. The amount is ordered to be refunded within one week from the date of receipt of copy of this order.