

**IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCHES, CHANDIGARH**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER &
Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

**STAY APP. Nos. 43 & 44/Chd/2018
(in ITA Nos. 498 & 499/Chd/2015)
(Assessment Years: 2007-08 & 2008-09)**

Sh. Devinder Singh Gill, Vs. i) The DCIT, Circle 5(1), Chandigarh
H.NO. 81, Sector 70, ii) Tax Recovery Officer-II,
Mohali Chandigarh

(PAN No. ANXPG9419K)

(Appellant)

(Respondent)

Appellant By : Dr. Gulshan Raj, CIT DR
& Sh. Manjit Singh, Sr DR

Respondent By : Sh. Parikshit Agarwal &
Sh. Sh. Sanjay Garg, CAs

Date of hearing : 24.08.2018

Date of Pronouncement : 24.08.2018

ORDER

Per Sanjay Garg, Judicial Member:

The present Stay Applications have been presented by the counsel for the assessee by way of special mentioning in the Open Court subsequent to the pronouncement of the order of even date passed in M.A. No. 127 & 128/Chd/2018 whereby the ex-parte order dated 19.4.2016 of the Tribunal passed in ITA Nos. 498 & 499/Chd/2015 has been set aside and the appeals have been restored to their original position. It has been submitted by the Ld. Counsel that there are urgent and emergent circumstances for which the present stay applications have been moved before the Bench. It has been further submitted that the Income Tax authorities / Tax Recovery

officer-II (TRO) on 13.8.2018 has arrested the assessee and has sent him to the jail of non-deposit of the outstanding tax demand and interest. That the assessee has a fair case on merits and that even the balance of convenience lies in favour of the assessee. The Ld. counsel, therefore, has submitted that in view of the above circumstances, since the personal liberty of the assessee has been compromised, the Stay Applications be heard today itself.

In view of the above request, the Registry was directed to register the Stay Applications and present it for hearing for today itself. At the request of the Ld. DR for giving him some time to prepare the arguments, the application has been directed to be heard after a break of two hours.

2. Since the facts and issues involved in both the Applications are similar, these have been heard together and are being disposed of by this common order. For the sake of narration of facts, **Stay Application No. 43/Chd/2018** is taken as a lead case.

3. It has been pleaded in the application that, in fact, during the pendency of the appeal, the assessee was behind the bars being got involved in some criminal cases and was released on bail only on April 11, 2016. The assessee could not prosecute his appeal either before the CIT(A) nor before this Tribunal as at that time the assessee was in jail. That after the passing of ex-parte order dated 19.4.2016 by this Tribunal dismissing the appeal of the assessee bearing ITA Nos. 498 & 499/Chd/2015, the Department initiated recovery proceedings. No recovery notice was ever received by the assessee as the assessee was behind the bars. That even after the assessee got bail only on 11.4.2016, some other FIRs were registered against the assessee and the assessee was under so much

pressure that he was making efforts to prevent his arrest and avail necessary remedies as his life and liberty was at stake. Since he was not present at this house, no recovery notice was ever received by the assessee. Suddenly, the assessee was detained by the police and was produced before the Tax Recovery Officer-II, Chandigarh on 13.8.2018 who ordered the arrest of the assessee and sent him to jail in Sector 45, Chandigarh for non-payment of outstanding tax dues. The Ld. TRO also attached the property to the assessee by issuing attachment order to GMADA. That the assessee owns only one property i.e. his residential house No.81, Sector 71, Mohali and that even the said house is also mortgaged with the bank. That the assessee has suffered heavy losses. The assessee has huge loans outstanding against him. That the assessee had pleaded before the TRO vide his application dated 16.8.2018 that all his assets were at the disposal of the TRO and that the TRO could make the recovery out of his assets and he should not sent the assessee to jail. It was submitted before him that he was undergoing treatment of third and fourth stage of lever failure and was required to be kept in constant medical supervision. However, the request of the assessee to release was turned down by the TRO. That even the appeal filed by the assessee to Commissioner Income Tax against the order of the TRO sending the assessee to jail has not been fixed of hearing till date, whereas the assessee for the last so many days has been put behind the bars. Even the request of the assessee for inspection of the records and for providing copies of the relevant records has also not been acceded to, whereas, the assessee is suffering hard as he has been put in jail for non-payment of taxes. That the assessee does not own substantial assets from which the recovery can be made and even there is no allegation against the assessee that the assessee has intentionally concealed his assets for

avoiding the payment of tax. The Ld. counsel has submitted that earlier the appeal of the assessee before the CIT(A) vide order dated 26.2.2015 and further appeal to the Tribunal vide order dated 19.4.2016 were decided ex-parte of the assessee. That since the application of the assessee for setting aside the ex-parte order has been allowed today and the appeal has been restored to its original position to be heard on merits, hence, the assessee's present stay application is required to be considered especially in view of the circumstances that in an exception manner the assessee has been put behind the bars for non-deposit of the outstanding taxes which are impugned in the appeal under consideration of this Tribunal.

It has been further submitted that the aforesaid outstanding dues for the non-payment of which the assessee has been put into jail is the subject matter of the present appeal. It has been further submitted that the assessee has a fair case on merits and balance of conveniences also lies in favour of the assessee. The Ld. counsel inviting our attention to the grounds of appeal has submitted that in this case the assessee has not only raised a valid and debatable legal issue regarding reopening of the assessment, but also the assessee has a fair case on merits as the alleged amount of unexplained investment did not belong to the assessee rather to the other parties on behalf of whom the assessee had made the investments in question. However, the Income Tax Authorities wrongly and illegally assessed the said amount as that of the assessee and made the impugned additions into the income of the assessee. The Ld. counsel has further submitted that due to the bad luck of the assessee, the assessee was put behind the bar for a long time being accused in some criminal cases and, hence, could not attend the proceedings either before the CIT(A) or before this Tribunal resulting into confirmation of addition made by the

Assessing officer. He has, therefore, submitted though the assessee has not possessed of sufficient resources to pay the impugned demand, however, the assessee with all his effort is ready to deposit Rs. 5 lacs in each of the appeal towards the outstanding demand. It has, therefore, been submitted that the recovery of the impugned demand be stayed and that the consequential proceedings for recovery by virtue of which the assessee has been put into jail, be also stayed and the assessee may be ordered to be released from jail till the decision on merits in the appeal.

4. The Ld. DR, on the other hand, has submitted that this Tribunal has got no jurisdiction for staying the recovery or issue of order for release of the assessee as the proceedings relating to the mode of recovery are not appealable before this Tribunal. He has further submitted that even otherwise the assessee had not deposited any amount out of the outstanding dues. Hence, there is no question of staying the recovery of the impugned demand.

5. We have heard the rival contentions and have also gone through the record. Vide our separate order of even date in MA Nos. 127 & 128/Chd/2018 of the assessee, after setting aside the ex-parte order dated 19.4.2016 passed, the appeals of the assessee have been restored to their original position and number, in view of this, the assessee has now got a valid right not to contest the validity of the impugned additions as well as to approach this Tribunal for the stay of recovery of impugned demand as per the provisions of section 254 of the Income-tax Act, 1961.

6. Now coming to the merits of this application. The counsel for the assessee has demonstrated that the assessee has prima-facie case in these appeals. Further the assessee has already been put behind bars and as

stated by the Ld. counsel, today is the 12th day of the assessee behind the bars and further stay in prison would not only amount to grave hardship to the assessee, rather, in fact, the personal and physical liberty of the assessee is at stake and thus the balance of convenience also lies in favour of the assessee. It is not the case of the Department that the assessee has concealed his assets or the assessee is in possession of the assets or money from which he at this stage is able to deposit the due taxes but he intentionally avoids. The assessee though has pleaded that he presently is not in possession of sufficient funds but to get himself out of jail, has proposed through his counsel to deposit Rs. 5 lacs in each case towards the outstanding demand in both the appeals. However, Ld. DR has insisted that the assessee may be directed to deposit some reasonable amount as Rs. 5 lacs is a meager amount as against the outstanding recovery.

7. Considering the above submissions and the financial position of the assessee as has been pleaded before us by the Ld. Counsel for the assessee, and the circumstances that the assessee is behind the bars for non-payment of tax, and further considering the submissions that the assessee has a fair case on merits and further the balance of convenience also lies in favour of the assessee, in our view, the interest of justice will be well served, if the impugned recovery of the tax along with interest etc. be stayed subject to deposit of Rs. 20 lacs i.e. Rs. 10 lacs in each appeal. We may further point out here that the sole motive of the Department for aforesaid action of putting the assessee in jail is to recover outstanding tax dues which are otherwise impugned before us, however, the Department has failed to recover any amount from the assessee despite putting the assessee behind the bars for 12 days as on today. Whereas by our above directions not only the Department will get recovery of Rs. 20 lacs out of the outstanding

dues against the assessee but also the interest of justice will be served so far as the grievance of the assessee is concerned, in view of the facts and circumstances of the case as discussed above. At this stage, the Ld. counsel for the assessee has submitted that the assessee will deposit the aforesaid amount of Rs. 20 lacs today itself and that the Revenue authorities / Ld. TRO be directed to arrange henceforth for release of the assessee from the jail.

8. Since the recovery in this case has been stayed subject to the deposit of Rs. 20 lacs, in total, and if the assessee deposit Rs. 20 as ordered above, in that event, there will be no reason left with the TRO to keep the assessee in jail. Since, it is a question of the confinement of a person in jail due to non-payment of tax dues and since the recovery of outstanding dues has been stayed except the amount as has been directed to the deposited, the Department / TRO is ordered to arrange for the release of the assessee immediately on the deposit of said amount. Income Tax Authorities / TRO is directed to promptly do the necessary formalities including the issue of release warrant to the Jail officials on the compliance of the directions of this Tribunal by the assessee regarding the deposit of outstanding demand.

9. In the above terms, the captioned Stay applications of the assessee are hereby allowed.

Our observations given above will not have any bearing on the merits or otherwise at the time of final disposal of the case.

Considering the facts and circumstances of the case, the appeals of the assessee are directed to be heard out of turn on priority basis and is fixed for hearing on **30.8.2018**.

Copy of the order be promptly supplied to the parties.

Order pronounced in the Open Court.

Sd/-

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Dated : 24.08.2018

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Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT*
4. *The CIT(A)*
5. *The DR*

Sd/-

(SANJAY GARG)
JUDICIAL MEMBER