

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SMT DIVA SINGH, JUDICIAL MEMBER  
AND  
SH. J.S.REDDY, ACCOUNTANT MEMBER**

**I.T.A .Nos.-130 to 135/Del/2015  
(ASSESSMENT YEARS-2010-11 to 2015-16)**

|  |    |  |
|--|----|--|
| Bharat Heavy Electrical Ltd.<br>Post Office BHEL,<br>Jhansi-284120 (U.P.).<br><b>(APPELLANT)</b> | vs | ITO (TDS),<br>Aayar Bhawan, Civil<br>Line, Jhansi<br><b>(RESPONDENT)</b> |
|--|----|--|

|                      |                                |
|----------------------|--------------------------------|
| <b>Appellant by</b>  | <b>Sh. Piyush Kaushik, Adv</b> |
| <b>Respondent by</b> | <b>Ms.Y.Kakkar, DR</b>         |

|                              |                   |
|------------------------------|-------------------|
| <b>Date of Hearing</b>       | <b>22.05.2015</b> |
| <b>Date of Pronouncement</b> | <b>19.06.2015</b> |

**ORDER**

**PER BENCH**

By the present appeals the assessee assails the correctness of the consolidated order dated 10.04.2015 for Financial Years 2009-10 to 2014-15 of the CIT(A), Agra on the following grounds:-

1. *“That on the facts and circumstances of the case and in the Law, the CIT(A) has seriously erred in directing the assessee to deposit as much as 60% of demand u/s 201(1)/201(1A) for obtaining a stay of demand.*
2. *That on the facts and circumstances of the case and in the Law, the CIT(A) has seriously erred in not appreciating on the aspect of strong prima facie case along with the balance of convenience in assessee’s favor along with the aspect of financial hardship as preciously submitted before the CIT(A).*
3. *That on the facts and circumstances of the case and in the Law the appellant/ assessee in view of deposit of app.32% of total demand till date is entitled for stay of the remaining demand until the disposal of appeal by the CIT(A).*

*That the appellant craves leave to Add to and/ or Amend, modify or withdraw the grounds outlined above before or at the time o of hearing of the appeal.”*

2. The relevant facts of the case are that ITO (TDS), Jhansi vide his separate order dated 03.03.2015 raised a total demand of Rs.2,69,23,555/- for the six years under consideration. As per record, the assessee thereafter filed the appeals under consideration before the CIT(A) and also as per record filed writ petition before the Hon'ble Allahabad High Court. Reference to these facts is found made in the impugned order itself. The Hon'ble High Court vide writ tax No.-199/2015 to 204/2015 on 26.03.2015 in the recovery proceedings directed the Appellate Authority to endeavour to decide the interim stay application alongwith appeal preferably within 10 days from the date of receipt of the certified copy of the order. Considering the same, the impugned order has been passed. For ready-reference, we extract the relevant portion from the same:-

4. *“I have perused the application for stay of demand in respect of all financial years and also the relevant orders of the AO concerning the instant proceedings. Since, a present stage the contention before me is not whether TDS would be deductible or not but applications for stay of demand are up for consideration which need to be decided. It is also observed that the appellant while keeping in view the issue as involved, has already made a payment of Rs.70,00,000/-. Moreover, the interest component which is worked out by the AO is a necessary charge once an assessee is held to be an assessee in default, therefore that cannot be considered for stay. The Hon'ble Allahabad High Court in the case of Jagran Prakashan Ltd. in Writ tax No.56 of 2015 dated 29.01.2015 has asked the assessee in the case before it to pay the interest component u/s 201(1A) of the Income-Tax Act, 1961.*

5. *In light of the above discussion, keeping in view that the interest component cannot be granted any stay, in the interest of justice and in all fairness I stay the 40% demand out of total demand of Rs,2,69,23,555/- as computed u/s 201 and 201 (1A) of the Act till 30.10.2015 or disposal of the appeals whichever is earlier. As regards the balance demand of Rs.16154133/- out of which the assessee has already deposited Rs.70,00,000/- the assessee appellant is asked to pay the remaining balance in six equal installments to be paid starting from April 22th 2015 and payable on or before 22th of every month. The assessee is also directed to deposit the first installments starting from the first financial year i.e 2009-10 and thereafter in the same*

*order for the following financial year and so on. It is further laid down that in case of any default in making payment of demand by the appellant as directed above, the appellant shall be deemed to be an assessee in default as per the provisions of the Income tax Act, 1961 and the AO may take appropriate action for recovery of the entire outstanding demand as on that date.”*

3. Aggrieved by this, the assessee is in appeal before the Tribunal.

4. Both the Ld. AR and the Sr. DR have been heard. Considering the fact that the issue on merits is yet to be decided by the CIT(A) and being of the view that the findings arrived at in para 5 have not taken into consideration the relevant criteria for deciding the issue namely the existence of prima facie arguable case in favour of assessee or not; irreparable loss if any and the financial position of the assessee etc. as no reference to these settled legal parameters is found mentioned in the order. It also seen that the merits of the order of the Assessing Officer till date have not been tested by any Appellate Authority. Thus, in these peculiar facts and circumstances, we direct the Revenue authorities from refraining to take any co-ercive action against the assessee till the passing of the order of the CIT(A) on merits. In view of the same, the Ld. CIT(A) is directed to pass a speaking order in the appeals on merit after giving the assessee a reasonable opportunity of being heard. The Ld. Sr. DR on the above view being expressed by the Bench insisted that a direction to the assessee be included mandating that the assessee should co-operate in ensuring that the hearing takes place. In the fact of the insistence of the Ld. Sr. Dr, Ld. AR, Mr. Piyush Kaushik gave an oral undertaking on behalf of his client by stating that the assessee shall fully participate in the proceedings.

Accordingly, in view of the above we direct:-

- (i) that the Ld. CIT(A) shall give a reasonable opportunity to the assessee;
- (ii) the assessee on it part shall endeavour to give full and to proper co-operation in ensuring that hearing takes place;

(iii) an outer limit of three months is given to the Revenue which is considered to be a reasonable time for the Revenue to pass a speaking order after hearing the assessee.

The order was pronounced in the open Court at the time of hearing. Accordingly the appeals of the assessee are allowed for statistical purposes and the impugned order is set aside.

5. In the result, the appeals filed by the assessee are allowed for statistical purposes.

**The order is pronounced in the open court on 19<sup>th</sup> of June, 2015.**

**Sd/-  
(J. S. REDDY)  
ACCOUNTANT MEMBER**

**Sd/-  
(DIVA SINGH)  
JUDICIAL MEMBER**

Dated: 19/06/2015  
*\*Amit Kumar\**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI