

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'A' CHANDIGARH**

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

**M.A. No. 37/Chd/2018
in Stay Application No. 18/Chd/2016
(in ITA No. 1382/Chd/2016)
Assessment Year: 2013-14**

The ITO (Exemptions)
Chandigarh

Vs. Chandigarh Lawn Tennis
Association, Sector 10,
Chandigarh

PAN No. AAATC4943J

(Appellant)

(Respondent)

Appellant By : Smt. Chanderkanta, Addl. CIT
Respondent By : Sh. Meghraj, Manager

Date of hearing : 23.03.2018
Date of Pronouncement : 06.04.2018

ORDER

Per Sanjay Garg, Judicial Member:

This is an application moved by the department for vacation of ad interim stay orders dated 15.2.2017 and 28.4.2017. It has been pleaded in the application that in this case the then concerned Assessing Officer had passed a very well-reasoned order while disallowing the claim of the assessee of exemption u/s 11 of the Income Tax Act. Further, that the Ld. CIT(A) has also passed a very detailed and well-reasoned order while dismissing the appeal of the assessee and upholding the order of the Assessing officer. Thereafter the office of ITO(E) had requested the assessee to make the payment of outstanding demand, however, the

assessee informed that it had filed an appeal against the order of the CIT(A) along with an application for stay of demand before the ITAT (This Tribunal). That thereafter this Tribunal vide its order dated 15.02.2017 passed the following order:

“The main appeal is adjourned to 05.04.2017 for filing of certain documents by the assessee. The stay application is also adjourned to 05.04.2017. In the meantime, demand will remain stayed till next date of hearing.”

2. It has been further stated that in the absence of any documentary evidence like the Stay order dated 15.2.2017 passed by the Bench, the bank account of the assessee was attached on 17.2.2017 and the outstanding demand of Rs.29,08,230/- was recovered. That thereafter the Tribunal passed order dated 28.4.2017 in the M.A. moved by the assessee agitating the said recovery, whereby it not only directed the Assessing officer to remain present on the next date of hearing and furnish the written submissions but also directed the revenue not to recover any amount out of the impugned demand. That the orders of this Tribunal dated 15.2.2017 and 28.4.2017 granting exparte stay against the recovery of the demand are totally non-reasoned orders passed by this Tribunal, contrary to the well settled law and the same are liable to be vacated. Further submissions have been made regarding the merits of the appeal along with reference to certain case laws. It has therefore been pleaded that the stay granted vide order dated 15.2.2017 and 28.4.2017 be vacated.

3. It is also pertinent to mention here that the main appeal along with Stay Application came for hearing before this Tribunal on 22.3.2018, upon which final arguments were heard and the case had been reserved for

orders. No separate arguments on the stay application had been addressed by either of the parties fully knowing that the said application would become infructuous on the disposal of the appeal.

4. However, this application moved by the AO for vacation of interim orders dated 15.2.2017 and 28.4.2017 was not fixed along with the main appeal but separately and came for final hearing on 23.3.2018 i.e. the next day after conclusion of arguments on the main appeal.

5. The Ld. DR vehemently pressed for hearing on the application for vacation of the aforesaid interim orders dated 15.2.2017 and 28.4.2017. despite apprised by the Bench that no useful purpose will be served at this stage as the relief granted by the said orders was just as an ad interim measure till the next date of hearing and that the said period of operation of order has already expired and even various subsequent interim/file orders thereafter have been passed wherein subsequent direction had been passed and that the directions given in the impugned orders dated 15.2.2017 and 28.4.2017 have merged into/superseded with the subsequent interim orders/stay orders passed from time to time and even the main case/appeal of the assessee has already been heard for final disposal, hence, there was no question of the vacation of the said interim stay orders pertaining to the past period, at this stage. That even the stay application itself, would automatically become infructuous on the decision on the main appeal and that the directions, if any given in any interim order passed during the pendency of the appeal would cease to operate as the same will be got merged into the final order.

In view of the insistence of the Ld. DR, we proceed to decide the present application.

6. Before proceeding further with this order, we deem it fit to discuss the sequence of events in this case. The case was fixed for the first time for hearing before the Bench on 15.2.2017 constituted of Sh. Bhuvnesh Saini, Judicial Member (since transferred to Delhi) and Smt Annapurna Gupta, Ld. Accountant Member. Now, at this stage, it is pertinent to mention here that the appeal as well as the Application for Stay of demand came for the first time for hearing before the Tribunal on 15.2.2017. The counsel for the assessee sought to produce more documents in support of his claim. In the meantime, he also requested for the stay of the recovery of demand. The Tribunal vide order dated 15.2.2017 adjourned the main appeal as well as the Stay application to 5.4.2017 and in the meantime it was also ordered that the demand will remain stayed till the next date of hearing.

7. Neither the Stay application nor the main appeal were disposed of by the Tribunal on the said date 15.2.2017. The recovery of demand was stayed as an interim measure. In the meantime, the Assessing officer i.e. ITO (E) despite the knowledge of the Stay Order, in defiance of the interim order dated 15.2.2017, illegally recovered the tax demand from the bank account of the assessee, for which the assessee filed a separate Misc. Application. It is further pertinent to mention here that on the next date of hearing i.e on 5.4.2017, Shri Ravi Sarangal, the then Ld. CIT-DR(since transferred) sought adjournment and on the oral request of Shri Ravi Sarangal Ld. CIT-DR, the case was adjourned to 25.4.2017. On 25.4.2017,

arguments on the M.A. moved by the assessee for refund / taking action against the Assessing officer for illegally recovering of tax demand from the account of the assessee in violation of the stay order, were heard and thereafter the order dated 28.4.2017 was passed directing the Assessing officer to refund the amount illegally recovered and also to give her explanation in this regard, the operating part of the said order is reproduced as under:

“10.....In the case in hand, the Assessing officer was not only aware of the pendency of the Stay Application of the assessee before this Tribunal, but she has in fact violated the Stay Order dated 15.2.2017 of this Tribunal despite a written intimation regarding the same by the assessee to her office. In these circumstances, and in view of the proposition of law laid down by the Hon'ble High Courts, as discussed above, we direct the Revenue to immediately, without any fail, refund the amount to the assessee which has been illegally recovered from the account of the assessee in violation of the directions of the Tribunal. Before proceedings further against the Assessing officer, in the interest of justice, an opportunity is given to the Assessing officer to give her explanation regarding the illegal act on her part. The Assessing officer is directed to personally come present on the next date of hearing. She is also directed to file her written submissions in this respect and furnish report regarding compliance of the above stated directions of refund on the next date of hearing i.e. 22.05.2017. The main appeal along with Stay Application is also fixed for the same date **22.05.2017**.

In the meantime, the Revenue will not further attempt to recover any amount out of the impugned demand.”

8. Pursuant to the above directions of the Tribunal, the ITO(E) namely Smt. Sunita Sharma appeared before the Tribunal on 22.5.2017 and informed the Tribunal that the directions regarding refund of the amount illegally recovered have been complied with. However, no explanation either orally or in writing was offered regarding the illegal act on the part

of the Assessing officer in recovering the tax demand despite the recovery of demand specifically stayed by this Tribunal. The case was again adjourned at the request of the Departmental representative as he was not available due to his official duty elsewhere. The Tribunal further directed to maintain the status quo till the next date of hearing. The case was thereafter adjourned to 7.7.2017.

9. Again on 7.7.2017, an adjournment was sought by the then concerned CIT-DR, present in the court, namely Shri Sushil Kumar stating that the concerned CIT- DR, Shri Ravi Sarangal who was conversant with the facts of the case was on leave. In view of this, since the case was adjourned to 4.7.2017. The parties were directed to maintain the status quo. On 4.7.2017, surprisingly again, adjournment was sought by the Department stating that concerned DR was busy in another Court. The case was accordingly adjourned on the oral request of the Department to 19.9.2017. The parties were directed to maintain status quo.

10. Thereafter on 19.9.2017, the Bench did not function. As per the order of the Incharge Senior Member, the case was adjourned to 21.9.2017.

11. On 21.9.2017, the Ld. Sr. DR filed written submissions on behalf of the Assessing officer which was running into 14 pages. The Ld. AR of the assessee requested that he may be given time to go through the same. Accordingly, the case was adjourned to 24.10.2017 along with stay application and the status quo was directed to be maintained. On 24.10.2017, the Ld. Departmental representative again requested for adjournment and accordingly the case was adjourned to 21.12.2017.

However, on 21.12.2017, the Bench did not function and finally the case was heard on 23.3.2018.

12. In the meantime, the Assessing officer moved the present application for vacation of ex-parte Stay order dated 15.2.2017 and 28.4.2017. However, the Registry found certain defects in the said M.A. and ultimately the M.A. was fixed for hearing on 23.3.2018. As discussed above, the main appeal along with Stay Application had already been heard on 22.03.2018 for final disposal. As observed above, no arguments had been addressed by any of the parties on the Stay Application as stay application would have automatically become infructuous on the disposal of the appeal.

13. As noted from the narrated facts above, the stay application moved by the assessee was never heard on merits because of frequent adjournments sought by the Department except once i.e. on 21.9.2017, when the Ld. Assessing officer had filed the written submissions and the Ld. counsel for the assessee wanted to go through the same or on 21.12.2017, when the Bench did not function. Since, on the dates fixed, the Ld. DR was not available for arguments hence, at the oral request of the Ld. Counsel for the assessee and taking into consideration the likely consequences to the assessee of any coercive recovery of the demand by the Department, it was felt just and prudent to grant interim stay and direct to maintain the status quo till the next date of hearing. The order passed by this Tribunal dated 15.2.2017 was operative till the next date of hearing i.e. 15.4.2017. However, the concerned Assessing officer in complete disregard and disobedience to the order of the Tribunal despite knowledge

of the stay order as discussed in detail in our order dated 28.4.2017, illegally recovered the amount from the bank account of the assessee. On 22.5.2017, the Assessing officer informed that the said amount has been refunded and that the parties were directed to maintain status quo till the next date of hearing.

14. Now in the application moved by the Ld. Assessing officer for vacation of orders dated 28.4.2017 and 15.2.2017, it has been mentioned that the Assessing officer herself in this case had passed a very well-reasoned order while disallowing the claim of the assessee of exemption u/s 11 of the income Tax Act. Further, it has also been pleaded that the Ld. CIT(A) has also passed a very detailed and well-reasoned order discussing the appeal of the assessee and upheld the order of the Assessing officer. However, the Tribunal while staying the recovery of the demand has passed an ex-parte order which is a totally non-reasoned order and is contrary to the well settled law and the same is liable to be vacated. The Assessing officer has tried to justify her act of violation of the interim order of this Tribunal stating that in the absence of any documentary evidence like the Stay order dated 15.2.2017 passed by the Bench, the bank accounts of the assessee was attached on 17.2.2017 and the outstanding demand of Rs.29,08,230/- was recovered. However, no averments have been made as to the reasons or justification necessitating for the vacation of the interim stay granted vide order dated 15.2.2017, which otherwise had already been violated and disobeyed by the Assessing officer. Even, no explanation either orally or in writing has been offered till date as was directed vide order dated 28.4.2017 regarding the illegal act on the part of the Assessing

officer in recovering the tax demand despite the recovery of demand specifically stayed by this Tribunal.

15. As noted above, on each and every date of hearing, fresh orders for maintaining status quo were passed. In view of this, since the period of operation of the orders has already passed/ has become a past, we will be astonished to know how the vacation of the stay order dated 15.2.2017 and 28.4.2017 the period of operation of which was upto 4.5.2017 and 22.5.2017 respectively, at this stage, will in any manner of any help to the department. The vacation of order dated 15.2.2017 or of 28.4.2017 at this stage will not absolve the concerned officer/s of their act of violation of order during the subsistence of the order. We have not come across with any case law laying down the proposition that interim stay orders can be vacated with retrospective effect. We do not know, if the department has devised some time machine to call back the past time between the period 15.2.2017 and 5.4.2017 or between the period from 28.4.2017 and 22.5.2017 and then make recovery of the impugned demand and then again switch on to the present date. Another grievance put by the Department is that the application has been fixed for hearing very late due to certain objections put by the Registry. Suppose the present application would have been allowed on the date of its filing itself i.e. on 14.1.2018, even then the revenue would not have been able to make any recovery on account of vacation of stay granted vide orders dated 15.2.2017 and 28.4.2017 as the said orders have been further superseded /merged into subsequent orders whereby fresh directions for stay/maintaining of status quo were granted. Even the orders dated 15.2.2017 and 28.4.2017 have not been continued as

such rather the subsequent stay orders were passed in view of subsequent developments / change of circumstances such as recovery of the amount by the Department in violation of stay order dated 15.2.2017 and thereafter order of the Tribunal directing for refund of the amount dated 28.4.2017 and thereafter the status quo order after the statement of the AO that amount has been refunded to the assessee and also in view of the reluctance of the concerned DRs in arguing the matter and seeking adjournments.

16. There is another interesting fact coming out of the record. The assessing officer in her application for condonation of delay with covering letter dated 20.2.2018 has referred to various dates of hearings stating that she was waiting for the disposal of the Misc. Application filed by the assessee against violation of the order dated 15.2.2017. This shows that the concerned ITO (E) was aware of the subsequent orders of stay/status quo, then why the application for vacation of two orders only has been filed is not understandable.

17. The crux of our above discussion is that the department officials fully knowing that no useful purpose will be served either by moving the present application and even knowing that the present application was infructuous and non-maintainable even on the date of its filing, not only filed this application, but also insisted for arguments despite that the hearing on the main appeal had already been concluded on a previous date. The only motive behind this application is to confront and show resentment and displeasure to this Tribunal for granting interim stay against recovery in this matter.

18. The wording of the opening part of the application for vacation of stay clearly reveals that the Department is showing her resentment not only about the passing of ex-parte interim stay order but also towards the directions of the Tribunal for directing her to refund the amount illegally recovered.

19. At this stage, we are pained to note that that the Department, in case it is aggrieved of any order passed by the Tribunal, instead of approaching the higher forum/ Hon'ble High or the Hon'ble Apex Court, has now a days chosen the course of showing open defiance of, disrespect of or of open resentment to orders of the Tribunal, which may prove be very dangerous for the sanctity of the courts of law/Justice dispensation system of the country. Our above observations are in view of the some other cases also where the Department has either violated the Stay orders or come with applications for vacation of stay orders despite the fact the Ld. representatives of the Department itself making requests for adjournments. When being asked, the only explanation comes that as 31st March is approaching, they have to achieve their targets of the tax collection. We would also like to caution the concerned officers that this type of conduct of open resentment against the judicial orders may also compel us to initiate and recommend to the Hon'ble High Court for appropriate action under the contempt of courts Act.

20. In view of the discussion made above, we are of the view that the department has chosen to file and contest the preset application fully knowing that the same is frivolous, infructuous, not maintainable and in

fact redundant with the only motive to openly show resentment against the passing of stay orders by the Tribunal, instead of challenging the same before the higher judicial authorities. This application is therefore dismissed with costs of Rs. 20,000/- to be deposited in Prime Minister's Relief fund within 15 days of receipt of the copy of this order. While ordering so, we are cautious that it will not result into any loss to the Govt. Exchequer but the movement of some funds from one branch of the Govt. to the other perhaps will convey the message of caution to the concerned officials. However, keeping judicial restraint, no contempt of court proceedings recommended at this stage.

21. Now to come up for showing/ furnishing evidence of compliance of the above orders on **4.5.2018**.

Order pronounced in the Open Court on 06.04.2018

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
Dated : 06.04.2018

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Rkk

Copy to:

- *The Appellant*
- *The Respondent*
- *The CIT*
- *The CIT(A)*
- *The DR*