IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, CHANDIGARH

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER &
Dr. B.R.R. KUMAR, ACCOUNTANT MEMBER

M.A. No. 70/Chd/2018
in Stay Application No. l8/Chd/2017
(in ITA No. 1560/Chd/2017)
Assessment Year: 2009-10

Greater Mohali Area Development Authority, Room No. 243, 2nd Floor, PUDA Bhawan, Sector 62, Mohali	Vs. The DCIT, Circle-6, Mohali
PAN No. AAALG0872G	
(Appellant)	(Respondent)

Appellant By : Sh. Sudhir Sehgal
Respondent By : Dr. Ranjit Kaur, DCIT, C-6(1)

Date of hearing : 10.04.2018
Date of Pronouncement: 09. 05.2018

ORDER

Per Sanjay Garg, Judicial Member:

The present Misc. Application has been moved by the applicant – assessee pleading that though the Tribunal vide order dated 20.12.2017 had stayed the recovery of the balance amount to be recovered by the Department from the assessee for the assessment year 2009-10, yet the Department has recovered the outstanding demand by way of adjustment against the refund for Assessment year 2008-09. It has been further pleaded that this Tribunal had also directed in the order dated 20.12.2017 to refund Rs. 50 lacs recovered to the debtor of the assessee, which have been wrongly recovered by the Department. Hence, it has been pleaded that

the action of the Ld. ACIT in this respect is totally wrong & illegal and further that she may be directed to refund the amount recovered illegally from the assessee in violation of order dated 20.12.2017.

2. Before further proceeding, we would like to discuss here a few facts relevant to the adjudication of the Misc. Petition. The assessee filed the Stay Application No.18/Chd/2017 relevant to ITA No. 1560/Chd/2017 in for assessment year 2009-10 seeking stay of recovery of the outstanding tax demand for the year under consideration. It has been pleaded in the Stay Application that the Department had wrongly and illegally recovered certain amounts from the applicant–assessee before the assessee could approach the Tribunal for filing the appeal against the order of the CIT(A) and further certain amount was recovered during pendency of the appeal / stay application before this Tribunal. The said stay application has been disposed of by this Tribunal vide its order dated 20.12.2017. The relevant facts have been discussed in para 5 of the order dated 20.12.2017, which read as under:-

> "5. From the above pleadings of the parties and also from the perusal of the documents on record, following facts emerge before us:-
>
> (i) Certain additions were made by the Assessing officer pursuant to the reopening of the assessment for AY 2009-10 and thereby tax demand of Rs. 633912410/- has been raised by the Assessing officer.
>
> (ii) Being aggrieved by the above additions made by the Assessing officer, the assessee preferred appeal before the Ld. CIT(A).
>
> (iii) In the meantime the assessee deposited Rs. 10 crores out of the tax demand vide Challan

No.00004 dated 1.3.2017 and moved an application for Stay of recovery of remaining demand of tax as per CBDT Circular No. 1914(supra). The Assessing officer allowed the application and stayed the remaining tax demand till the disposal of the appeal by the CIT(A) vide his order dated 24.03.2017.

(iv) The CIT(A) decided the appeal against the assessee vide order dated 17.10.2017, however, the copy of the order was dispatched to the assessee on 6.11.2017, which was received by the assessee on 9.11.2017. The assessee was not aware of the said passing of the order of CIT(A) till the receipt of the copy of the same on 9.11.2017.

(v) The Department in the meantime, on 2.11.2017, made coercive recoveries for an amount of Rs. 10 crores towards the outstanding demand for AY 2009-10, by attaching the bank account of the assessee on 2.11.2017.

(vi) Since the assessee was not aware of the passing of the order by the CIT(A) on 17.10.2017, the assessee presumed that the recovery was made by the Assessing officer after vacating the Stay order during the pendency of appeal before the CIT(A).

(vii) The assessee filed a Writ petition before the Hon'ble Punjab & Haryana High Court challenging the aforesaid recovery and the Hon'ble High Court passed an interim order staying the operation of the impugned order dated 9.11.2017 on the condition that the assessee shall abide by the terms and conditions that may be imposed by the Assessing officer qua the payment of amount assessed as has been done in the previous order, binding the petitioner to a schedule.

(viii) In the meantime, the assessee received the impugned order of CIT(A) dated 17.10.2017 and moved an application before the Hon'ble High Court stating therein that since the appeal of the assessee has been decided by CIT(A) and the copy of the order has been received on 9.11.2017, which

has been assailed before the ITAT Chandigarh Bench and that an application for stay has also been filed there; hence, the aforesaid writ petition allowed to be withdrawn. The Hon'ble High Court considering the above request allowed the application and dismissed the writ petition as 'withdrawn'.

(ix) Similarly, for assessment year 2013-14, a tax demand of Rs. 25.35 crores was raised by the Assessing officer out of which the assesse deposited a sum of Rs. 30.80 cores being 15% of the tax demand and the remaining tax demand was stayed by the Assessing officer till the pendency of the appeal before CIT(A).

The appeal for assessment year 2013-14 was also decided by CIT(A) on 17.10.2017 and the copy of the order was dispatched on 6.11.2017 which was received by the assessee on 9.11.2017. Assessee immediately filed appeal against the said order along with application for stay of recovery before this Tribunal. During the pendency of the appeal and stay application before this Tribunal, The Assessing Officer made coercive recovery of Rs. 5.85 crores on 20.11.2017 and another recovery of Rs. 7.85 cores on 22.11.2017, the date on which the Stay application was fixed for hearing before this Tribunal. The Assessing officer also recovered a sum of Rs. 50 lacs from the debtor of the assessee."

3. The Tribunal strongly depreciated the action on the part of the officials of the Department in illegally recovering the amount from the assessee observing that the Act and conduct of the Revenue officials in this case was against the judicial conscience. That the canons of law, justice and ethics have been broken down by the officials of the Department and an effort has been made to render the provisions of the law inoperative, debarring the petitioner from availing any remedy from the higher forum.

The relevant part of the order of Tribunal dated 20.12.2017 passed in Stay Application No. 18/Chd/2017 is reproduced as under:-

> "7. Now, we proceed to pass the detailed order after considering the lengthy arguments of both the parties. From the above facts, it is established beyond doubt that Assessing officer has not acted in this case in the manner she was supposed to act being a quasi-judicial officer. Taking undue benefit from the procedural lacunas, sequence of events had been so managed by the officials of the Department during the period falling in between the date of pronouncement of the order of CIT(A) and the date of receipt of the copy of the same by the petitioner/assessee, thereby creating such circumstances, whereby, putting the assessee in a helpless condition and taking advantage of his helplessness by way of attaching the bank account of the assessee and withdrawing the money therefrom, before the assessee could receive the order of Ld. CIT(A) and approach to the higher forum for stay of the operation of the said order and thereby foreclosing the remedy available to the assessee under the Act and rendering the assessee helpless and remediless. Even the Department continued to make the coercive action even after the filing of the appeal and the present Stay Application before this Tribunal and even on a date when the matter was fixed for hearing on the Stay Application before this Tribunal. The act of the Assessing officer demonstrates that she wanted to preempt the Tribunal from dealing with the Stay application which was scheduled for hearing on November 22, 2017. The Act and conduct of the Revenue officials in this case is against the judicial conscience. Canons of law, justice and ethics have been broken down by the officials of the Department. An effort has been made to render the provisions of the law inoperative, debarring the petitioner from availing any remedy from the higher forum.
>
> 8. The another shocking fact which emerged during the course of arguments is that when a question was raised to the Department officials as to how the Department came into knowledge of the order of the CIT(A) prior to 06.11.2017 when the copy of the same was dispatched to the assessee by the office of CIT(A)? None of the officials of the Department could satisfactorily explain about it. Even they could not satisfactorily inform as to on which date the office of the AO received the copy of the impugned order of the

CIT(A). Under the circumstances it remains unexplained as to how the information regarding the decision of the appeal against the assessee travelled to the Assessing officer, prompting her to recover the amount from the assessee, that too by way of coercive means and without show causing the assessee or giving it an opportunity to approach to the higher Forum. The contention of the department that this Tribunal should also bear in mind that the assessee's appeal pending before CIT(A) for assessment year 2014-15 will be decided in December 2017 raising demand, on similar lines as per assessment years 2008-09, 2009-10 and 2013-14 can also be not appreciated, especially when the matter for assessment year 2008-09 has already been heard by the Tribunal

9. Another contention at this stage has been raised that the coercive recovery of Rs5.85 crores and Rs.7.58 Crores towards outstanding demand for AY -2013-14 was made on 20.11. 2017 and 22.11.2017; That the stay application of the assessee was fixed before the tribunal on 17.11.2017, but no order for stay of recovery was passed on the said date and the case was adjourned for 22.11.2017. Hence, when the tribunal had not passed any stay order, the department was within its right to execute the order of the AO which has been further confirmed by the CIT(A).

We are not convinced with the aforesaid arguments of the Ld. Representatives of the Department. No doubt, the case was fixed for hearing for 17.11. 2017 but the matter was adjourned to 22.11.2017 at the request of the Ld. Representatives of both the parties. The petitioner on the said date brought to the knowledge of the Tribunal about the conditional stay order passed in favour of the assessee by the Hon'ble Punjab & Haryana High Court whereby the operation of the impugned order has been stayed subject to the condition that the assessee shall abide by the terms and conditions that may be imposed by the assessing authority qua the demand of the amount assessed as has been done in the previous order binding the petitioner to a schedule. The petitioner further informed the Tribunal that the Hon'ble High Court was approached by way of writ under the impression that stay has not been granted or vacated by the AO even despite deposit of 15% of the disputed demand as per CBDT's circular No.1914 (supra). The Tribunal considering the above facts, on the request of the ld. representatives of both the parties, adjourned the matter to

22.11.2017 enabling the assessee to apprise about the true facts to the Hon'ble High Court and if the assessee so desire, to withdraw the writ petition. The assessee immediately moved the Hon'ble High court with an application for withdrawal of the writ petition in view of subsequent developments, which was allowed by the Hon'ble High Court vide order dated 22.11.2017. We may mention here that till 22.11.2017, the directions of the Hon'ble high court staying the impugned order of the AO were in force. Moreover, it has not been explained as to why the undue haste has been made when the matter was under consideration of the Tribunal as well of the Hon'ble High Court.

10. Another argument has been made that the amount recovered on 20.11.2017 and 22.11.2017 was appropriated towards the outstanding demand for AY 2013-14 and that the order of the Hon'ble High court was for AY 2009-10.

We are again not convinced at this argument also. The Respondent department has the benefit of the order of the Hon'ble High court for earlier assessment year involving similar facts and circumstances which was decided by the CIT(A) on the same date as for AY 2013-14 and under the circumstances, there was no justification on the part of the AO to make haste in coercive recovery for AY 2013-14, that too, on 22.11.2017 itself when the matter was fixed before this tribunal for hearing on the stay application. At the most, the AO could have called upon the assessee to make the payments. No justification has been offered as to why the department directly adopted the course of coercive recovery without asking the petitioner to deposit the amount or show causing it as to why the coercive recovery be not effected? It is pertinent to mention here that the petitioner also is a Govt. body and there is no allegation that it has ever defaulted in payment of taxes. There was not any likelihood of the petitioner of escaping form the tax liabilities. The petitioner was only availing the legal remedies available to it under the provisions of law.

11. Another meritless argument has been made that since the appeal of the assessee for earlier assessment year 2008-09 was decided by the CIT(A) against the assessee vide his order dated 30.1.2017, and hence, all / any Stay order granted in favour of the assessee for the assessment year under consideration i.e. assessment years 2009-10 & 2013-14

stood deemed to be vacated. Shockingly, the Stay order in this case was passed by the predecessor of the present Assessing officer on 24.3.2017 i.e. after passing of the order of the CIT(A) on 30.1.2017 for assessment year 2008-09. However, the assessee had already preferred appeal against the order of CIT(A) for assessment year 2008-09 and the Tribunal had already stayed the recovery of demand for assessment year 2008-09 vide order dated 21.3.2017 which was further extended vide order dated 26.09.2017. The Department has been well represented in the appeal of the assessee for assessment year 2008-09 through DR and the Department was well aware of the Stay granted by the Tribunal for assessment year 2008-09 also. The more shocking fact is that the coercive measure has been made when even the arguments on appeal of the assessee for assessment year 2008-09 have already been heard on and the judgment has been reserved for orders.

12. Another argument made by the Department is that, in fact, no Stay order has ever been passed by the Assessing officer for the assessment year under consideration; That the copy of the stay order produced on the file by the assessee is forged and fictitious. When this Tribunal, after hearing the aforesaid contention, proposed to refer the matter to the police authorities for verification as to whether the copy of the said order produced by the assessee was forged and fictitious, the Ld. Principal CIT arose and submitted that the Stay order eventually has been passed in favour of the assessee, however, that the same was not in force on the date of recovery on 2.11.2017 after passing the order on the appeal of the assessee by CIT(A) on 17.10.2017. From the above, it appears that the department has not come with any definite stand and the facts have been twisted as per whims and wishes of the Departmental officials and coercive recovery has been effected in an undue haste, violating all the principles of judicial discipline and natural justice. In the somewhat identical facts in the case of 'Maharashtra Housing & Area Development Authority (MHADA) vs ADIT (Exemptions)' [2014] 66 SOT 66 (Mumbai)/ URO / 49 taxman.com 341 (Trib), wherein coercive measure was made by the Department from the account of the assessee (MHADA) after the passing of the order of CIT(A) but prior to the hearing of the Stay application by the Tribunal, the Coordinate Mumbai Bench of the Tribunal has observed that ITO being a quasi-judicial authority should observe the

parameters which are laid down by the High Courts in various decisions. The Tribunal while relying upon the decision of the Bombay High Court in the case of 'UTI Mutual Funds Vs. ITO' (2012) 19 taxman.com 250/345 ITR 71 (Bom.), of the Coordinate Bench of the Tribunal in the case of 'RPG Enterprises Ltd Vs. DCIT' (2002) 74 TTJ (Mumbai) 391 as well as in the case of 'Maharashtra State Electricity Board Vs. JCIT' (2002) 81 ITD 299 (Mumbai) has observed that the Assessing officer under the circumstances had misused his powers and the action of the recovery from the bank account of the assessee was gross violation of the directions and judicial principles as well as the basic rule of law and principle of natural justice. The Tribunal in these circumstances directed to refund the entire demand, coercively recovered from the assessee. The Department challenged the aforesaid directions of the Tribunal before the Hon'ble High Court. The Hon'ble Bombay High Court vide its order dated 4.2.2014 in 'DIT vs Income Tax Appellate Tribunal and another' reported in 361 ITR 469 (Bom) upheld the aforesaid directions of the Tribunal observing that the action of the coercive recovery on the part of the Assessing officer was against the elementary principal of rule of law. That the state is expected to act fairly. The undue haste on the part of the Assessing officer in recovering the amount was not only contrary to the binding decision of the Court but also shocking to the judicial conscience. The entire action was directed at rendering the Tribunal and the assessee helpless so that no relief can be granted in favour of the assessee. The Tribunal could not be silent spectator of the arbitrary and illegal action on the part of the Assessing officer so as to frustrate the legal process provided under the Act. The grant of refund of the amount that has been coercively recovered by the department was in the exercise of the tribunal's inherent powers to ensure that the assessee is not left high and dry only on account of illegal and highhanded actions on the part of revenue and the assessing officer.

13. Though, under the circumstances and in the light of above discussion, the assessee has a fair case for seeking refund of the amount coercively recovered by the department, however, the ld. Counsel for the assessee at this stage has restricted his claim only qua the refund of the amount collected from the debtor of the assesse and further relief for the stay of the recovery of the balance amount of tax demand

for the relevant assessment years 2009-10 and 2013-14 has been sought.

14. The department has admitted that an amount of Rs.50 lakh has been collected from the debtor of the assessee towards tax demand against the assessee. We have already ordered for the refund of the amount collected from the debtor vide our interim directions dated 29.11.2017 (as reproduced in the earlier part of this order). The said directions are reaffirmed. So far as the stay of the recovery of remaining part of the tax demand and interest thereupon is concerned, the Ld. AR of the assessee has submitted that the assessee is a local body engaged in the development of land and plots, making the same available to the general public for residential and business purposes. The assessee in the said development activities is in the need of funds. The assessee has also substantial financial liabilities as it has raised substantial loans from the bank. Further that the assessee has a fair case on merits. It has been further submitted that the Department has already recovered 31% out of the total demand for assessment year 2009-10 and almost 70% of the demand in assessment year 2013-14. He, therefore, has submitted that further recovery by the Department be stayed till the disposal of the appeal. Though, the Ld. DR has admitted that almost 70% of the amount for assessment year 2013-14 has already been recovered, however, she has further submitted that the Department be allowed to recover the amount to the extent of 50% of the outstanding total demand for assessment years 2008-09 and 2009-10.

15. We have considered the rival submissions. So far as the demand for assessment year 2008-09 is concerned, the same is not a subject matter of the present applications. Even recovery for the assessment year 2008-09 has already been stayed by the Tribunal and even the appeal for the said year has already been heard by the Tribunal which has been reserved for orders. Under the circumstances, there is no question of vacation of stay or of ordering any recovery for assessment year 2008-09 at this stage. So far as the assessment years under consideration i.e. 2009-10 and 2013-14 are concerned, it is own circular of CBDT wherein it has been provided that Assessing officer should stay recovery by getting deposited 15% of the disputed demand during the pendency of the appeal before the CIT(A) and, in fact, admittedly in this case also, the recovery of the demand was

stayed by the Assessing officer subject to the deposit of 15% of the disputed amount by the assessee during the pendency of the appeal before the CIT(A). However, as observed above, the Department has already recovered 31% of the total demand for assessment year 2009-10 and almost 70% of the demand for assessment year 2013-14. Further, taking into consideration the land and plot development activity of the assessee for providing residential as well as business accommodation to the residents, in our view, no further recovery is called for at this stage. The recovery of the remaining amount is, therefore, stayed for a period of six months or till the disposal of the appeal by the Tribunal whichever is earlier. It is directed that the assessee will not contribute to any unnecessary adjournments of the hearing of the appeals, in default of which, the Department will be at liberty to seek vacation of Stay.

Our observations made above, shall have no bearing effect on the merits of the case.

16. In the result, both the Stay Applications are treated as allowed."

4. Though severe structures have been passed by the Tribunal in its order dated 20.12.2017 against the officials of the department for illegal and coercive recovery made by them from the assessee and further despite directions of the Tribunal staying further recovery from the assessee and also to refund Rs. 50 lacs, illegally recovered from the debtor of the assessee as directed in the order dated 20.12.2017 reproduced above, the Departmental officials did not bother to give any heed to the directions passed by the Tribunal and again in complete violation of the orders of the Tribunal recovered / adjusted the amount of Rs. 16,50,62,238 vide letter of the Assessing officer dated 13.3.2018. Even the Assessing officer ignored the submissions made by the assessee vide letter filed on 28.2.2018 which was not only delivered to the office of the Assessing officer manually but

also through e.mail dated 9.3.2018 and further reminder dated 12.3.2018 objecting against the adjustment of refund for assessment year 2008-09 against the demand for the assessment year under consideration i.e. 2009-10 and also apprising the Assessing officer about the Stay order of the Tribunal against the recovery of the demand. The Tribunal after considering the submissions of both the parties, passed the following order dated 23.3.2018:-

"23.03.2018

M.A.No. 70/Chd/2018 –Greater Mohall Area Development Authority, Mohali Vs. DCIT

Present for the assessee: Sh. Sudhir Sehgal, Advocate
Present for the Department: Smt. Chanderkanta, Addl. CIT

Heard the Misc. Petition. The assessee-applicant has pleaded that this Tribunal vide order dated 20.12.2017 had stayed recovery of the balance amount sought to be recovered by the Department from the assessee for assessment year 2009-10. The Ld. Counsel has submitted that despite the order dated 20.12.2017, The Department has not complied with the instructions and has recovered the outstanding demand by way of adjustment against the demand for assessment year 2008-09. He, in this respect has relied on the paper book pages 37 & 38 which is a copy of letter addressed by the concerned Assessing officer to the assessee wherein it has been mentioned that the outstanding tax demand for the assessment year 2009-10 has been adjusted against the refund due for assessment year 2008-09. The Ld. Counsel, therefore, has pleaded that the concerned Assessing officer be directed not to adjust the refund for assessment year 2008-09 against the demand for assessment year 2009-10. It has been further pointed out in the application that even the other directions given by the Tribunal directing the Assessing officer to refund Rs. 50 lacs recovered from the

debtor has also not been complied with. The Ld. counsel, therefore, has submitted that the appropriate action be taken / directions be issued in this respect to the concerned authorities.

2. On the other hand, Ld. DR has moved an adjournment letter wherein it has been stated that heavy quantum is involved in the case and that the case is very sensitive to the Department and that grave issues have been raised in the petition against the conduct of the Assessing officer. That the comments of the Assessing officer have been sought in this respect. She, therefore, has requested that 15 days time may be granted to the Department to file written submissions. It has been further argued by her that the notice cannot taken of the letter dated 13.3.2018 written by Dr. Ranjit Kaur, DCIT Circle 6(1) Mohali, who is the Assessing officer of the assessee, wherein it has been mentioned that the refund for assessment year 2008-09 had been adjusted against the demand for 2009-10. That the assessee must produce the copy of the challan or other relevant evidences showing that the Assessing officer has adjusted the refund. That the action cannot be taken on the mere averments of the assessee without any supporting evidence. She has further submitted that even before taking any action, the Assessing officer be given an opportunity to reply to the averments made in application. Another argument has been addressed that this Misc. Applicationis not maintainable as it does notspeak of any mistake apparent on record of the order. That there was an order of the Hon'ble High Court dated 5.12.2017, whereas, this Tribunal subsequently has passed the order dated 20.12.2017. That in view of this, the order of the Tribunal is not enforceable. Further, that the present Misc. Application is not maintainable at this stage.

3. We have considered the rival contentions. It is noticed from the record that this Tribunal vide order dated 20.12.2017 has noticed that the Department has already recovered 31% of the total demand for assessment year 2009-10, and taking into consideration the facts and circumstances of the case especially the development activity carried on by the assessee, the further recovery of the demand has been stayed for a period of 6 months or till the disposal of the appeal by the Tribunal, whichever is earlier. The Tribunal has also re-affirmed its

directions given on 29.11.2017, directing the Department to refund the amount of Rs. 50 lakhs collected by the Department from the debtor of the assessee. Now in this petition, the applicant has stated that the Department has not complied with the directions of the Tribunal for refund of the amount to the debtor also and further that in complete violation of the order of the Tribunal, the Assessing officer has recovered the remaining amount from the assessee. The assessee, thus, has moved the present application.

4. So far as the arguments of the Ld. DR that this application is not maintainable, we are not in agreement with the above contention. If this Tribunal has jurisdiction to pass an order, directing for Stay of recovery of the demand, this Tribunal also has got the inherent power for entertaining and adjudicating application for non-compliance of the order / directions issued by it. Further, if any contempt of court proceedings have to be taken / recommended against any party to the litigation / official for violation of the order of the Tribunal that have also to be considered and decided after hearing such application moved by either party. In view of this, we hold that application of the assessee is maintainable.

5. So far as the argument that the order of the Tribunal has no force of law, the said argument, in our view, is not tenable, rather the argument taken in this respect show the unwillingness, disrespectful and objectionable attitude of the Department for the orders of the Tribunal. If the Department was aggrieved by the order / any directions given by the Tribunal in the order dated 20.12.2017, the proper course was to approach the higher judicial forum / Hon'ble High Court, but to say that the order cannot be enforced is an act which does not behove to the officials of the Department. So far as the submission that before passing any adverse order, opportunity of hearing should be granted to the Assessing officer, we are in agreement with the above submissions of the Ld. DR. Let the concerned Assessing officer be summoned and she be heard as to why the 'Contempt of Court' proceedings be not initiated / recommended against her for violating / disrespecting the orders of the Tribunal and further why the appropriate costs be not imposed and reasonable damages be not awarded to the

assessee in this respect and as to why the same be not recovered from the salary of the concerned responsible officer / officers.

6. Let the concerned Assessing officer as well as the other concerned officers who have either part of the execution of recovery or have approved the recovery / adjustment of refund despite the order of the Tribunal dated 20.12.2017 come and explain their position on ***6.4.2018****. Copy of the order be supplied to the Ld. DR so that the same may be conveyed further to the concerned officer/s."*

5. Pursuant to the above order, the Assessing officer namely Dr. Ranjit Kaur, DCIT and the Additional CIT namely Shri Kultej Singh Bains, who approved the aforesaid proposal for adjustment of refund appeared in person on 6.4.2018 and tendered apology letter. However, when this Tribunal enquired as to whether the amount illegally recovered in violation of the said order dated 20.12.2017 has been refunded to the assessee, they answered in negative, and thereafter the case was adjourned to 10.4.2018 for submitting report by the concerned officials regarding refund of the amount illegally recovered and also explanation of the concerned official regarding their illegal acts of recovery. Thereafter on 10.4.2018, the concerned officials namely Dr. Ranjit Kaur, JCIT and Shri Kultej Singh Bains, Addl. CIT appeared and submitted a letter dated 10.4.2018 stating therein that in compliance of the directions of the Tribunal, the department has issued refund of the amount adjusted against the outstanding demand for assessment year 2009-10 i.e. as amount of Rs. 1633955420/- vide refund order / cheque No. 257211 dated 9.4.2018. It has also been stated that the concerned officials tender an unconditional apology for their act and further undertake to comply with the any further orders / directions

given by the Bench. It has been further requested that the further proceedings against the concerned officials be dropped.

The counsel for the assessee - applicant has also admitted that the amount illegally recovered from the assessee has been refunded.

6. Before proceeding further, we deem it fit to mention here that despite severe structures and directions of the Tribunal against the departmental officials passed vide order dated 20.12.2017, which was not only very much in the knowledge of not only of the concerned officials who had done the coercive act of recovery from the assessee but also to the senior officials of the Department. The concerned Principal Commissioner of Income Tax herself had come present to argue the matter in the Stay Application on 29.11.2017 alongwith departmental representatives and the concerned Assessing officer leading to order dated 20.12.2107. Under the circumstances, it cannot be said that the illegal recovery, even despite strict directions of the Tribunal, has been made by the Assessing officer without the knowledge of the higher officials. It is painful to note here that the Departmental officials in order to achieve their targets at the close of the financial year i.e. by 31st March of the year, not only are tempted to ignore the principles of law and natural justice but cross their jurisdictional / authoritative limits, in complete violation of the directions / orders issued by their higher judicial authority. The concerned officials i.e the Assessing officer or the Addl. CIT, in our view, are not so ignorant or innocent to understand the likely consequences which they may have to face in proceeding illegally to make coercive recovery in violation of the orders of this Tribunal or higher courts but they, in our view, are so much

pressurised by the higher officials to do so and they have to choose the lesser risky option out of the two i.e. either to face the departmental action / dire of their senior officers for not achieving the targets or to face the contempt proceedings, if any, likely to be initiated by the Courts of law for violation of their orders, and interestingly, they conveniently choose the later option because perhaps they think that courts / higher judicial authorities will not opt for strict view in case the amount coercively recovered is refunded after passing of the cutoff date i.e. 31st March, and an apology tendered to the Court / higher judicial authority. They also know that that even such a situation of refund or apology could occur only in case the concerned assessee would choose to contest such illegal recovery. Our above view is not only based on the facts of this case, but we have come across with these type of facts and circumstances in other cases also. This type of practice adopted by the Department, in our view, may lead to severe consequences affecting the administration of justice. It is right time for the Department / CBDT to take necessary steps in this respect.

7. Now coming to the facts on merits, as observed above, since the amount recovered illegally during the stay application has been refunded by the Department to the assessee and the assessee at this stage is no more aggrieved; further the concerned officials have also tendered unconditional apology and also in view of our observations made above that these lower rank departmental officers have to succumb to the pressure of their higher ups for the sake of their service / career, we accept the unconditional apology tendered by the Assessing officer and Addl. CIT.

With the above observations, the present Misc. Application is disposed of.

Order pronounced in the Open Court on 09.05.2018

Sd/-	Sd/-
(Dr. B.R.R. KUMAR)	**(SANJAY GARG)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated : 09.05.2018
Rkk

Copy to:

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