

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

WRIT PETITION NO. 542 OF 2019

Oracle Financial Services Software Ltd, Mumbai .. Petitioner

Versus

Deputy Commissioner of Income Tax-13(1)(1) & Ors. .. Respondents

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- Mr. G.C. Srivastava a/w Mr. Suvinay K. Dash and Mr. Sukhsagar Dalal for the Petitioner
 - Mr. Akhileshkumar Sharma for the Respondents
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**CORAM : AKIL KURESHI &
M.S. SANKLECHA, JJ.**

DATE : FEBRUARY 28, 2019.

P.C.:

1. This petition presents unusual facts. The petitioner is an assessee, has challenged the orders dated 22.1.2019 and 11.2.2019 passed by the Assessing Officer and Commissioner of Income Tax (Appeals) respectively. For assessment year 2013-14, the order of the assessment passed in case of this petitioner assessee gave rise to a tax demand of Rs. 205 crore (rounded off). The petitioner had initially paid a sum of Rs. 40 crore (rounded off) towards such demand. Subsequently, the petitioner's refunds for the earlier years amounting to Rs. 27 Crores and 71 Crores have

also been adjusted towards such payment. On 31.3.2017, the Assessing Officer passed the order recording that the petitioner has already paid Rs. 40 crore which is more than 15% of the total demand of Rs. 205 crore and therefore as per the CBDT Circular dated 29.2.2016, as further revised by instructions dated 21.3.2016, stay is granted to the assessee upto the disposal of the appeal by the Commissioner (Appeals). On 12.6.2018, the Assessing Officer passed further order adjusting total refund claim of Rs. 29 crore against the demand and granted stay till disposal of the appeal.

2. Thereafter, once again the Assessing Officer passed the impugned order dated 22.1.2019 in which he observed as under:-

" Please refer to your letter dated 21.12.2018 in your response to intimation u/s. 245. In this regard, you are requested to refer to CBDT's Officer Memorandum [F.No. 404/72/93-ITCC] dated 29.2.2016 wherein it is clearly mentioned at S. No. 4(E)(ii) that the Assessing Officer may reserve the right to review the order after expiry of reasonable period (say 6 months); and at S. No. 4.(E)(iii) that the Assessing Officer may reserve the right to adjust refunds, if any, against the demand.

It is also to be mentioned that various decisions referred by you in your letter dated 21.12.2018 are related to prior period before

the CBDT's above Instruction. Further, the Hon'ble Supreme Court in its decision dated 28.3.2018 in the case of Asian Resurfacing of Road Agency Pvt Ltd Vs. Central Bureau of Investigation (Criminal Appeal Nos. 1375-1376 of 2013] has directed that in all pending cases where stay against proceedings of a civil or criminal trial is operating, the same will come to an end on expiry of six months. Accordingly, since the period of 6 months for stay of demand has been reviewed as per the CBDT's Circular and also based on the decision of the Hon'ble Supreme Court as referred above.

In view of the above, stay granted in your case for A.Y. 2013-14 is hereby revoked and accordingly, you are requested to pay the outstanding demand for A.Y. 2008-09 and A.Y. 2013-14 within seven (7) days of receipt of this letter."

3. The petitioner approached the Principal Commissioner of Income Tax after the said order was passed by the Assessing Officer. The Pr. Commissioner also rejected the petitioner's request for stay by order dated 11.2.2019 which is also impugned in this petition in which he placed reliance on the decision of the Supreme Court in the case of **Asian Resurfacing of Road Agency Pvt Ltd & Ors. Vs. Central Bureau of Investigation**¹ and permitted the Assessing Officer to recover full demand pending the appeal. His concluding observations may be noted :-

"6. Thus, neither the requirement of payment of only 15% (now modified to 20%) of the amount is to be followed in all the cases nor the stay can continue in perpetuity and the Board itself required that the A.Os. shall reserve the right to review the order and adjust

1 AIR 2018 SC 2039

refunds. Any stay granted in violation of these instructions amounts to non-observations of the directions of the CBDT by the A.O. Further, Hon'ble Supreme Court in the order of Asian Resurfacing (supra) have held that no stay can continue beyond six months unless it is extended by a speaking order. The assessee's arguments that the same applies to a trial is not correct as the Hon'ble Apex Court has passed the order and issued the directions in order to cut down the delay in judicial proceedings of civil and criminal nature both and the Assessing Officer has revoked the stay granted beyond six months by following the spirit of the order. Mere filing of an appeal is not sufficient to allow the stay of recovery of demand and as has been stated in instructions number 1914, a higher superior authority should interfere with the decision of the AO/TRO only in exceptional circumstances eg. where the assessment order appears to be unreasonably high-pitched or where genuine hardship is likely to be caused to the assessee. The higher authorities should discourage the assessee from filing review petitions before them as a matter of routine or in a frivolous manner to gain time for withholding payment of taxes. The assessee has not made out a case that it has genuine hardship on account of payment of demand or adjustment of the refund or the order is a high pitched one and, therefore, there is no justification for interfering with the stay revocation order passed by the Assessing Officer. The Assessing Officer has followed the procedure prescribed under the Act by issuing the intimation under Section 245 and also has addressed the objections raised by the assessee. Thus, in view of the facts of the case, there is no warrant for interfering with the decision of the Assessing Officer and the petition dated 31 January 2019 is rejected. The Assessing Officer shall take all steps to recover the demand in the case of the assessee not only by adjustment of refund but also by taking recourse to other provisions of the Act."

4. We are prima facie of the view that the Revenue Authorities committed serious error. Against the total demand arising out of the order of assessment of Rs. 205 crore, the Assessing Officer has already recovered a total of Rs. 140 crores by now through different means. There is no allegation that the petitioner is responsible for delay in disposal of the appeal before the Commissioner. Merely relying upon the decision of the Supreme Court in the case of Asian Resurfacing of Road Agency Pvt Ltd (supra), Revenue Authorities now held a belief that any stay against the recovery granted would automatically lapse after six months. This is neither the purport of the judgment of the Supreme Court, nor the observations made in the said judgment in the context of civil and criminal litigation can be imported in present set of quasi judicial proceedings. The power of the Assessing Officer to review the situation every six months, would not authorized him to lift the stay previously granted after full consideration and insist on full payment of tax without the assessee being responsible for delay in disposal of the appeal or any other such similar material change in circumstances.

5. Learned counsel for the Revenue prayed for time for filing reply. By way of ad-interim relief, the impugned orders dated 22.1.2019 and 11.2.2019 are stayed. The respondents are prevented from carrying out any further recoveries pursuant to the order of assessment in respect of the petitioner for assessment year 2013-14.

6. S.O to 4th April, 2019.

[M.S. SANKLECHA, J.]

[AKIL KURESHI, J]