

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI C BENCH, MUMBAI
(through web-based video conferencing platform)**

[Coram: Justice P P Bhatt, President, and Pramod Kumar, Vice President]

SA No. 184/Mum/2020
Arising out of ITA No. 189/Mum/2020
Assessment year: 2010-11

Pandhes Infracon Pvt Ltd**Appellant**
157 Railway Lines, Sushila Apartments
Solapur 413 001 [PAN: AAEC9086A]

Vs

Assistant Commissioner of Income Tax**Respondent**
Central Circle 1(3), Mumbai

Appearances by

Vipul Joshi and Dinkle Hariya *for the appellant*
Avneesh Kumar *for the respondent*

Date of concluding the hearing : April 24, 2020
Date of pronouncement : April 24, 2020

O R D E R

Per Pramod Kumar VP:

1. The assessee applicant, by way of an email, sought an extremely urgent hearing of this stay petition. On a perusal of the reasons on record, and on a consideration of all the related facts, it was deemed fit and proper to hear this petition on urgent basis. However, as our physical office at Mumbai is not functioning at present, in view of the lockout and in view of guidelines of the Government of Maharashtra, it was considered appropriate to hear this stay petition, through web based video conferencing, from home offices of the respective Members of this coram.

2. By way of this petition, the assessee applicant seeks vacation of coercive measures against recovery of Rs 2,91,05,660, in respect of the remaining demands for interest and penalty for being assessee in default, in respect of the assessment year 2010-11. Out of total demand of Rs 6,47,75,090, the assessee applicant has already paid Rs 3,56,69,430, which is little more than the tax component of Rs 3,48,13,919,

and the balance outstanding demand represent interest and penalty only. The assessee applicant seeks vacation of garnishee proceedings initiated against the assessee.

3. The assessee appellant before us is a private limited company engaged in the business of construction as a civil contractor, builder and developer for last 25 years. It is stated that the assessee has been granted several contracts by the statutory authorities for the poor and economically weaker sections of the society, under the Prime Minister Awas Yojna. The assessee had filed income tax return disclosing taxable income of Rs 16,09,04,440 and the assessment was completed under section 143(3) of the Income Tax Act, 1961. Subsequently, however, the assessment was reopened and additions of Rs 33,93,97,197 were made on account of, what was termed as, bogus purchases. The total income was thus assessed at Rs 50,94,56,524. The assessee carried the matter in appeal before the CIT(A) but without much success, inasmuch as the addition to the extent of Rs 5,09,09,688 are said to have been deleted by the CIT(A) but, according to the assessee, the Assessing Officer is yet to give effect to the CIT(A)'s order. The assessee is now in appeal before us. In the meantime, the stay petitions filed by the assessee before the Assessing Officer and the PCIT, but without any success. All the bank accounts of the assessee have also been subjected to attached by garnishee proceedings under section 226(3). The Assessing Officer has also attached all the debtors, including Malegaon Municipal Corporation, by issuing garnishee notices to them under section 226(3). The work of the assessee has now come to standstill. It is also submitted that the assessee is not in a position to pay its labourers, even though there are directions from the Government to pay the labourers, support staff and other employees, and to take care of them. It is also stated that the assessee applicant also moved to Hon'ble Bombay High Court for immediate intervention, so as to enable the assessee to take care of its employees, but when the matter was taken up, at the time of mentioning, "it was suggested that the applicant should approach the ITAT first". The assessee is now in stay petition before us. The assessee has also informed us that in terms of the directions of the Collector, that he has received only yesterday evening, he has to make available his partially completed building for providing quarantine facilities to the Covid 19 patients.

4. We have heard the parties, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

5. As all of us are traversing through one of the toughest patch of time, facing the Covid 19 pandemic, and the poorer sections of society are hardest hit. It is, therefore, all the more necessary for every employer company to take care of its employees Ministry of Labour and Employment, Government of India, vide circular dated 20th March 2020, has advised as follows:



Kalpna Rajsinghot
Joint Secretary
Tel. 2371 6835

श्रम एवं रोजगार मंत्रालय
भारत सरकार
श्रम सक्ति भवन, राफ़ी मार्ग,
नई दिल्ली-110119
MINISTRY OF LABOUR & EMPLOYMENT
GOVERNMENT OF INDIA
SHRAM SHAKTI BHAWAN, RAFI MARG,
NEW DELHI-110119

D.O. No.M-11011/08/2020-Media

March 20, 2020

Dear

The World is facing a catastrophic situation due to outbreak of COVID-19 and in order to combat this challenge, coordinated joint efforts of all Sections of the Society are required. In view of the above, there may be incidence that employee's/worker's services are dispensed with on this pretext or the employees/workers are forced to go on leave without wage/salaries.

In the backdrop of such challenging situation, all the Employers of Public/Private Establishments are advised to extend their coordination by not terminating their employees, particularly casual or contractual workers from job or reduce their wages. If any worker takes leave, he should be deemed to be on duty without any consequential deduction in wages for this period. Further, if the place of employment is to be made non-operational due to COVID-19, the employees of such unit will be deemed to be on duty.

The termination of employee from the job or reduction in wages in this scenario would further deepen the crises and will not only weaken the financial condition of the employee but also hamper their morale to combat their fight with this epidemic. In view of this, you are requested to circulate this Advisory to the Employers/Owners of all the establishments registered with your Association for compliance.

With regards,

Yours sincerely,

(Kalpna Rajsinghot)

All Employers' Associations

"बाल श्रम रोके"

"STOP CHILD LABOUR"

6. On 23rd March, 2020, Secretary, Ministry of Labour and Employment, Government of India, in a communication to Secretary, Ministry of Housing and Urban Development, as advised as follows:

हीरालाल सामरिया, आईएनएसओ
भारत सरकार के सचिव
HEERALAL SAMARIYA, I.A.S.
Secretary to Govt. of India

श्रम एवं रोजगार मंत्रालय
भारत सरकार
श्रम सक्ति भवन
नई दिल्ली-110001
MINISTRY OF LABOUR & EMPLOYMENT
SHRAM SHAKTI BHAWAN
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Fax : 91-11-23 35 56 79
E-mail : secy-labour@nic.in

D.O. No. M-11011/08/2020-Media

March 23, 2020

Dear Shri Mishra Ji,

The World is facing a catastrophic situation due to outbreak of COVID-19 and in order to combat this challenge, coordinated joint efforts of all Sections of the Society is required. In view of the above, there may be incidence that employee's/worker's services are dispensed with on this pretext or the employee/worker are forced to go on leave without wage/salaries."

In the backdrop of such challenging situation, all the Employers of Public/Private Establishments may be advised to extend their coordination by not terminating their employees, particularly casual or contractual workers from job or reduce their wages. If any worker takes leave, he should be deemed to be on duty without any consequential deduction in wages for this period. Further, if the place of employment is to be made non-operational due to COVID-19, the employees of such unit will be deemed to be on duty.

The termination of employee from the job or reduction in wages in this scenario would further deepen the crises and will not only weaken the financial condition of the employee but also hamper their morale to combat their fight with this epidemic. In view of this, you are requested to issue necessary Advisory to the Employers/Owners of all the establishments under your Ministry.

With regards,

Yours sincerely,

(Heeralal Samariya)

Shri Durga Shankar Mishra,
Secretary,
Ministry of Housing and Urban Affairs,
Govt. of India
Nirman Bhawan,
New Delhi.

7. We find that in view of the attachment of assessee's bank accounts and assessee's debtors, the assessee is stated to be not in a position to perform these obligations. Given this situation, we are satisfied that this situation calls for our interference. In any case, even though we refrain from commenting upon merits of the case at this stage, we find that prima facie the assessee has an arguable case in appeal. We have also taken note of the fact that the assessee has already paid his entire tax liability, and in case the assessee is to opt for Vivad se Vishwas Scheme, he will have nothing further to pay. In these circumstances, the legitimate interests of the revenue cannot be prejudiced by our grant of stay on the remaining outstanding dues which are primarily on account of levy of interest, and consequential levies. In view of the above discussions, as also bearing in mind entirety of the case, we deem it fit and proper to grant a stay on collection/ recovery of the outstanding demands of Rs. 2,91,05,660 till the disposal of appeal or till the end of six months from the date of this order- whichever is earlier, subject to the following conditions:

(a) Any amount available to the assessee, as a result of this stay order and as a result of garnishee proceedings being lifted, will be first used for making payments of overdue and current wages payable to the labourer working with the assessee, and for making payment of overdue and current salaries to its employees. The amount available, after this exercise, will be used for the purpose of carrying out construction activity as necessary for providing quarantine facilities, as directed by the Collector. Any surplus amount thereafter will be used for construction activities of the business. The assessee will give an undertaking to this effect in writing.

(b) The assessee will file a statement showing utilization of funds, so available to the assessee on account of the garnishee proceedings being lifted, within 15 days from the date of this order.

(c) The assessee will fully cooperate in expeditious disposal of this appeal on out of turn basis, on 8th June 2020, and will not seek any adjournment. All the requisite paper books etc will be filed sufficiently in advance.

8. We also direct the Registry to fix the related appeal, for hearing on out of turn basis, on 8th June 2020.

9. In view of the above, all the garnishee orders issued by the revenue authorities on the bankers and debtors of the assessee are hereby suspended. These orders are thus declared to be no longer in force.

10. We also deem it appropriate to direct the learned Departmental Representative to convey this order to the field authorities. We also direct the Assistant Registrar ITAT, who is present in these proceedings, to send a certified copy of the order, by email, to the parties as soon as possible.

10. In the result, the stay application is allowed in the terms indicated above.
Pronounced in the open court on 24th day of April 2020.

Sd/xx
Justice P P Bhatt
(President)

Sd/xx
Pramod Kumar
(Vice-President)

Dated: April the 24th, 2020

Copies to: (1) *The appellant* (2) *The respondent*
 (3) *CIT* (4) *CIT(A)*
 (5) *DR* (6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai