आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट ।

IN THE INCOME TAX APPELLATE TRIBULAL, RAJKOT BENCH: RAJKOT

समक्ष श्री एन.एस.सैनी, लेखा सदस्य **एवं** श्री कुल भारत, न्यायिक सदस्य ।

BEFORE SHRI N.S. SAINI, ACCOUNTANT MEMBER And SHRI KUL BHARAT, JUDICIAL MEMBER

Stay Petition No.06/RJT/2015

(in आयकर अपील सं./ in I.T.A. No.739/RJT/2014 – AY 2012-13)

(**निर्धारण वर्ष /** Assessment Year : **2012-13**)

Indian Oil Corporation Limited (Western Region Pipelines Division) SMPL, Gauridad, Rajkot	**बनाम/** Vs.	The ACIT TDS Circle Rajkot
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.: RKTI 00185 D		
(अपीलार्थी **/Applicant**)	..	(प्रत्यर्थी / **Respondent**)

अपीलार्थी ओर से / **Applicant by :**	Shri P.M. Maharshi, C.A.
प्रत्यर्थी की ओर से/**Respondent by :**	Shri M.L. Meena, CIT-DR

सुनवाई की तारीख / **Date of Hearing : 18/02/2015**

घोषणा की तारीख /**Date of Pronouncement : 26/02/2015**

आदेश / O R D E R

PER BENCH:

The present stay petition is filed on 09/02/2015(in ITA No.739/Rjt/2014 for AY 2012-13) by the applicant-assessee seeking stay of penalty on the ground that the quantum appeal of the assessee is pending before this Tribunal (ITAT Rajkot Bench, Rajkot).

2. The ld.counsel for the assessee submitted that the Revenue is proposing to levy penalty on alleged failure to deduct tax at source on credits/payments of Rs.29,06,247/-. He submitted that in response to the notice, detailed reply was filed on 14/01/2015 stating various reasons as to why penalty should not be levied and a request for personal hearing was asked for. The ld.counsel for the assessee reiterated the submissions as were made in the stay petition. He further submitted that under the identical facts, the Coordinate Bench of this Tribunal (ITAT Ahmedabad-Trib.) was pleased to stay the penalty in the case of GE India Industrial (P.) Ltd. vs. CIT-IV, Baroda in Stay Application No.62/Ahd/2012 for AY 2004-05, vide order dated 04/01/2013. He submitted that the said order of the Tribunal was upheld by the Hon'ble Jurisdictional High Court, vide dated 18/07/2013.

2.1. On the contrary, ld.CIT-DR vehemently opposed the petition filed by the assessee and submitted that there is no provision under the Act for staying the penalty. He submitted that the Tribunal is creature of Income-tax Act and the appellant in enshrined in Section 253 of the Act. He submitted that a bare perusal of the section would make it clear that there is no such provision under section 253 of the Act which empowers the Tribunal to stay the penalty.

2.2. In the rejoinder, the ld.counsel for the assessee submitted that this issue has been decided by the Hon'ble Jurisdictional High Court in the case of ACIT vs. GE India Industrial Pvt.Ltd. vide order dated 18/07/2013. He further submitted that the Revenue has also filed the cross-appeal which is not fixed for hearing today (i.e. 18/2/2015).

3. We have heard the rival submissions and perused the material available on record and gone through the decision/judgement relied upon by the ld.counsel for the assessee. The power of the Tribunal to stay the penalty has been decided by the Hon'ble Jurisdictional High Court in the case of ACIT vs. GE India Industrial Pvt.Ltd.(supra). The Hon'ble Jurisdictional High Court in the said case has held as under:-

> *"6.0. In view of the above and for the reasons stated above, it is held that the ITAT in exercise of powers under section*

254 of the IT act would have jurisdiction and/or power of doing all such acts, or employing such means, as are essentially necessary to its execution and that the statutory power carries with it the duty in proper cases to make such orders for staying proceedings (inclusive of penalty proceedings) as will prevent the appeal if successful from being rendered nugatory and the appellate Tribunal has the power to grant stay as incidental or ancillary to its appellate jurisdiction. However, while exercising such power of stay, the Tribunal has to be satisfied that there is a strong prima facie case made out and the Tribunal is satisfied that the entire purpose of appeal would be frustrated or rendered nugatory by allowing the recovery proceedings/penalty proceedings to continue, during pendency of the appeal. It is also observed that in a case where the appellate Tribunal grants the stay either of recovery and/or stay of penalty proceedings, the appellate Tribunal shall see to it that the appeal before it is decided and disposed of finally at the earlier and preferably within a period of 3 months so that the appellant assessee may not take undue advantage by delaying the appeal proceedings.

6.1. In view of the above and for the reasons stated above, present Special Civil Application fails and the same deserves to be dismissed and is, accordingly, dismissed. In the facts and circumstances of the case, the ITAT is hereby directed to finally decide and dispose of the main appeal at the earliest but not later than three months from the date of receipt of the writ of the present order or on production of certified copy of the present order. All concerned are directed to cooperate the learned Tribunal in early disposal of the main appeal and within stipulated time stated hereinabove."

3.1 After hearing both the parties and in the light of the judgement of the Hon'ble Jurisdictional High Court, we are of the concerned view that the authorities below ought to have waited till the outcome of the quantum appeal pending before this Tribunal in ITA No.739/Ahd/2014. Therefore, respectfully following the ratio laid down in the judgement of Hon'ble Jurisdictional High Court in the case of ACIT vs. GE India Industrial Pvt.Ltd., dated 18/07/2013, we hereby direct the Revenue authorities to keep the penalty proceedings in abeyance for three months from the date of receipt of this order. In the meanwhile, the assessee would approach the Registry for clubbing the cross-appeal filed by the Assessee and the Revenue and make necessary application for hearing the appeal.

4. **In the result, stay petition filed by the assessee is allowed as indicated hereinabove.**

Order pronounced in the Court on Thursday, the 26th day of February, 2015 at Ahmedabad

Sd/-	Sd/-
(एन.एस.सैनी)	(कुल भारत)
लेखा सदस्य	न्यायिक सदस्य
(N.S. SAINI)	**(KUL BHARAT)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

AHMEDABAD; Dated 26 / 02 /2015
टी.सी.नायर, व.नि.स./*T.C. NAIR, Sr. PS*

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Applicant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-II, Rajkot
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,राजोकट/DR,ITAT, Rajkot
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, राजोकट / **ITAT, Rajkot**