IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCHES, CHANDIGARH

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

Stay Application No. 18/Chd/2017
(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

&

Stay Application No. 19/Chd/2017
(ITA No. 1561/Chd/2017)
Assessment Year: 2013-14

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 : Smt. Poonam Khaira Sidhu, Principal, CIT
Smt. Chanderkanta, Addl. CIT-DR
Dr. Ranjit Kaur, DCIT,Circle (6) (1), Mohali
Assessing officer

Date of hearing : 29.11.2017
Date of Pronouncement: 20.12.2017

ORDER

Per Sanjay Garg, Judicial Member:

With this common order we will dispose of the captioned applications of the assessee seeking stay for the recovery of outstanding tax demand for assessment year 2009-10 & 2013-14 respectively. Almost identical pleadings have been made in both the applications. The facts for the sake of convenience are taken from the application for assessment year 2009-10.

2. It has been pleaded that assessee is a local authority and derives income from business of developing land and sale of plots. The assessee filed return of income declaring loss of Rs.1,33,47,31,227/-. However, the Assessing officer framed the assessment vide order dated 30.11.2011 at a positive income of Rs.31,30,73,577/-. Thereafter, the assessment was reopened u/s 147 of the Income-tax Act, 1961 (in short 'the Act') and in the reopened assessment, the addition relating to External Development Charges (EDC) were made and the income was assessed at Rs. 1,31,64,65,505/-. The assessee preferred an appeal before the Ld. Commissioner of Income Tax (appeals) in [short CIT(A)] challenging the said reopening as well as additions made. Out of the total demand of Rs. 633912410/- raised by the Assessing officer, an amount of Rs. 10 crores had already been paid/deposited by the assessee. It has been pleaded that since 15% of the total of demand already stood paid when the appeal was preferred before the CIT(A) hence, the Assessing officer vide his order dated 24.3.2017 had granted the stay of recovery of the remaining amount till the pendency of the appeal before the CIT(A) in view of the Board's Circular No. 1914 and CBDT modified Instruction No. 1914 dated 29.2.2016. It has been further pleaded that though Ld. CIT(A) dismissed

the appeal of the assessee on 17.10.2017, however, the order was dispatched by his office to the assessee vide dispatch No. 1584 dated 6.11.2017 which was received by the assessee on 9.11.2017 and the assessee immediately presented the appeal before the Tribunal along with present Stay Application on 13.11.2017. However, in the meantime, the Department on 2.11.2017 through coercive measure attached the bank account of the assessee and recovered approx. Rs. 10 crores from different bank accounts without affording opportunity of hearing or giving any show cause notice to the assessee or declaring the assessee in default and even before the receipt of the order of the CIT(A) and no time was given to the assessee to seek the stay of the recovery from any higher forum/court. It has been further pleaded that the assessee approached the Hon'ble Punjab & Haryana High Court on 9.11.2017 by way of writ petition and the stay was granted by the Hon’ble Punjab & Haryana High Court for further recovery of the demand. It has also been pleaded that assessee has an arguable case on merits. That the assessee is a local authority and requires funds for its development activity. Further the assessee has raised substantial loans from the banks and thus has monthly interest liability and the assessee has not much liquid funds for the payment of the uncalled for demand by the Department. It has, therefore, been requested that the further recovery of tax demand and interest thereupon be stayed.

3. The Department has also filed its submissions dated 22.11.2017 in reply to the aforesaid Stay Application of the assessee wherein it has been submitted that the recovery has been effected on 2.11.2017 by following due process of law. That the case was decided in favour of the Department by the CIT(A) on 17.10.2017 and that there was no Stay for the

assessment year under consideration. Even if the stay had been granted earlier as per CBDT instruction No. 1914 (supra), it would have been vacated owing to order of CIT(A) dated 30.1.2017 in favour of the Department for the earlier assessment year 2008-09 on the identical issue. That the issue of EDC charges stood decided in favour of the Department vide CIT(A) order dated 30.1.2017 for assessment year 2008-09 which was followed by CIT(A) for assessment year 2009-10 and assessment year 2013-14 vide orders dated 17.10.2017. In this case, the assessee had failed to move the office of the Assessing officer for stay and that there was not a valid stay when the recovery was effected. That the Assessing officer was authorised to review the stay order after expiry of reasonable period (say six months) as per the CBDT Circular and that even the Board has fixed the responsibility of the Assessing officer for recovery of the demand. The issue has already been decided in favour of the Department vide CIT(A)'s order dated 30.01.2017 for assessment year 2008-09. That even the Hon'ble High Court has also not stayed the recovery of the demand as has been alleged by the assessee, rather it has been ordered 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. Pursuant to the Hon'ble High Court's order, the Assessing officer had issued letter dated 21.11.2017 for payment of arrears for assessment year 2009-10 as per schedule fixed for hearing. The Stay, if any, which had been granted earlier, would be deemed to have been vacated on 30.1.2017, the date on which the identical issue has been decided by the CIT(A) in favour of the assessee while deciding the appeal of the assessee for assessment year

2008-09. That the ITAT is also requested to bear in mind that the tax payer's appeal pending before CIT(A) for assessment year 2014-15 will be decided in December 2017 raising demand, on other facts being same, the case would be decided on similar lines as per assessment years 2008-09, 2009-10 and 2013-14 and that arrears of other assessment years are also outstanding against the assessee as on date. The assessee should set an example for other tax payers by paying dues on time. That the assessee does not have any arguable case. Reliance has been placed on the decision of the Bangalore Bench of the ITAT in the case of Google India Vs. DCIT International Taxation, Bengaluru stating that in the said case, the Tribunal has refused to grant the stay of demand on the ground that merely because the assessee was proposing to file appeal against that orders, that prima facie the case lies in favour of the Department. The assessee has sufficient funds to pay taxes and, hence, there was no financial hardship or even no irreparable injury would be caused to the assessee. That the balance of convenience also lies in favour of the Department.

4. The assessee filed comments / rejoinder to the aforesaid reply of the Department wherein it has been reiterated that there was a stay granted in this case by the Assessing officer till the disposal of the appeal by the CIT(A) vide order dated 24.3.2017. That in the light of the Board's Circular (supra), the assessee had paid the 15% of the outstanding demand. Neither the assessee had received order from the CIT(A) nor any intimation was received by the assessee from the Assessing officer before attachment and coercive recovery of the amount from the bank account of the assessee. It was incorrect that on the decision of the appeal of the assessee by the CIT(A) for earlier assessment year 2008-09 on 30.1.2017, the stay stood

vacated as even after passing the said order on 30.1.2017, the Assessing officer had granted the stay against recovery for the assessment year 2009-10 on 24.3.2017. Even the assessee preferred appeal against the order of the CIT(A) dated 30.1.2017 for AY 2008-09 and this Tribunal has granted the stay against recovery for assessment year 2008-09 vide its order dated 21.3.2017 which has been further extended on 26.9.2017. It was wrong to say that there was no stay in the case of the assessee. The DCIT has made coercive recovery without declaring the assessee as 'assessee in default' and even without sending any notice / letter prior to the receipt of the order of the CIT(A). A question has also been raised as to how the Assessing officer got the order much earlier than the assessee, though both of the office of the Assessing officer and assessee are located at Mohali. That before adopting any coercive action, it was incumbent upon the DCIT to intimate the assessee about the order of CIT(A). No opportunity of hearing was given to the assessee. The bank account of the assessee was attached indiscriminately without realizing that assessee was a local authority and it needed funds for day to day business. The coercive action of attachment of account should have been adopted as a last resort after exhausting the other modes of recovery. The Assessing officer has adopted a procedure unknown to law causing a gross miscarriage of the justice to the assessee. The assessee had never defaulted in payment of taxes. The Assessing officer was in the knowledge that even the recovery of the demand has been stayed by the ITAT of earlier assessment year 2008-09 also. The Assessing officer has wrongly relied upon the CBDT Instruction No. 1914 (supra) stating that the Assessing officer can review its order after expiry of reasonable period (say 6 months). If at all the

Department has to review the said order, it was required to issue a show cause notice to the assessee. The Assessing officer has violated the principles of natural justice and has flouted the provisions of law. She not only made recovery from the account of the assessee but also made coercive recovery from the debtors the assessee. All the actions of recovery had been made prior to the receipt of the order of CIT(A) by the assessee. Since the order of the CIT(A) had not been received by the assessee and the Department had already made recoveries, the assessee under the belief that the stay order has been vacated during the pendency of appeal before the CIT(A), filed the Civil Writ Petition before Hon'ble Punjab & Haryana High Court for stay of the recovery of the demand. The said writ petition was withdrawn on the receipt of the copy of the order of CIT(A) and the assessee immediately filed appeal before this Tribunal along with stay application against the order of CIT(A) dated 17.10.2017 received by the assessee on 9.11.2017. A further question has also been raised as to how the Assessing officer has predicted that the appeal for assessment year 2014-15, pending before the CIT(A), will be decided against the assessee . At the most, the Assessing officer could have stated that the Department has good case before the CIT(A). Even after filing of the appeal before the ITAT, the Bank account of the assessee have not been released. The assessee had filed the present stay application along with appeal on 13.11.2017 before the Tribunal and by that time an amount of Rs. 10 cores had already been recovered by way of attachment of bank accounts for AY 2009-10 and the other recovery of Rs. 5.85 crores for assessment year 2013-14 has been made on 20.11.2017 and then on 22.11.2017 the date on which the Stay application was fixed for hearing

before this Tribunal another recovery of Rs. 7.85 cores has been made for assessment year 2013-14, The department has violated the principles of natural justice. It has been denied that the prima facie case exists in favour of the Department or that the recovery of the demand will not create a financial hardship to the assessee. That the balance of conveniences also lies in favour of the assessee. Almost similar pleadings have been made in the application for stay of recovery of tax demand for AY 2013-14 except the figures of the tax demand and the recovered amount.

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).

(x) 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.

6. The assessee, before us, in the light of the above facts and circumstances has requested for stay of the pending tax demand for both the assessment years i.e. 2009-10 and 2013-14. The arguments on the application of the assessee have been heard on 29.11.2017 and following interim order / file order has been passed:-

> *"Application for Stay of recovery of the tax demand and interest thereupon relating to assessment year 2009-10 & 2013-14. As submitted by Ld. representative of both the parties for the assessment year 2009-10, 31% out of the total demand has already been recovered by the department and for assessment year 2013-14 almost*

70% of the amount has been recovered by the department.

It has already been brought to our knowledge that certain amount has also been recovered from the debtors of the assessee. Considering the overall facts and circumstances of the case which will be discussed in the detailed order to follow, we hereby direct the department not to recover any further amount from the assessee and all the bank accounts attached henceforth be released. The amount if any recovered from the debtors of the assessee be refunded immediately. Detailed order will follow.

Order pronounced in the Open Court on 29.11.2017"

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 bene 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.

Order pronounced in the Open Court on 20.12.2017

Sd/- Sd/-

(Dr. B.R.R. KUMAR)
ACCOUNTANT MEMBER

(SANJAY GARG)
JUDICIAL MEMBER

Dated : 20 December, 2017
Rkk

Copy to:

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