IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 14900 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS.JUSTICE HARSHA DEVANI

and

HONOURABLE MR.JUSTICE A.G.URAIZEE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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JAMNAGAR AREA DEVELOPMENT AUTHORITY....Petitioner(s)

Versus

PRINCIPAL COMMISSIONER OF INCOME TAX (OSD) (EXEMPTIONS) - AHMEDABAD & 6....Respondent(s)

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Appearance:

MR AR THACKER, ADVOCATE for the Petitioner(s) No. 1

ADVANCE COPY SERVED TO GP/PP for the Respondent(s) No. 7

MR MANISH R BHATT, SENIOR ADVOCATE with MRS MAUNA M BHATT, ADVOCATE for the Respondent(s) No. 1-4

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CORAM: **HONOURABLE MS.JUSTICE HARSHA DEVANI**
and
HONOURABLE MR.JUSTICE A.G.URAIZEE

Date : 22/09/2015

ORAL JUDGMENT
(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)

1. Leave to delete respondents No.5 to 7.

2. Rule. Mrs. Mauna Bhatt, learned senior standing counsel for the respondents waives service of notice of rule on behalf of the respondents. Having regard to the controversy involved in the present case and considering the view that the court is inclined to take in the matter, the matter was taken up for final hearing and is disposed of by this judgment.

3. By this petition, the petitioner prays for quashing and setting aside of the impugned communication order dated 2.7.2015 (Annexure-P to the petition) whereby the petitioner has been informed that its application for stay of demand is rejected and it is directed to pay the entire outstanding demand of Rs.1,92,73,490/- in twelve equal monthly installments of Rs.16 lakh each.

4. The facts stated briefly are that the petitioner is an urban development authority discharging duties under the provisions of the Gujarat Town Planning and Urban Development Act. In relation to assessment year 2012-13, the petitioner filed its return of income declaring its income as 'Nil' on 21.3.2013. The case was taken up for scrutiny and by an assessment order dated 13.3.2015 passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), the petitioner's income was assessed at Rs.4,25,77,240/- and a

demand of Rs.1,92,73,490/- was raised on the petitioner. The petitioner preferred an appeal under section 246 of the Act on 30.3.2015 before the Commissioner (Appeals). The petitioner then approached the respondent No.4 by way of an application under section 220(6) of the Act for keeping the demand in abeyance till the final disposal of the appeal preferred by the petitioner against the order of assessment before the Commissioner of Income Tax (Appeals). By an order dated 19.5.2015, the fourth respondent directed the petitioner to pay the entire amount in six monthly installments of Rs.32 lakh each. The petitioner thereafter approached the third respondent with an application for stay. By an order dated 10.6.2015, the third respondent reduced the amount of installments to Rs.16 lakh and increased the number of installments to twelve. Not being satisfied, the petitioner approached the Commissioner of Income Tax (Exemptions), the second respondent herein, with a request dated 22.6.2015 for considering stay of the demand by pointing out that the petitioner is a local authority constituted under the provisions of the Gujarat Town Planning and Urban Development Act. By the impugned order dated 2.7.2015, the request of the petitioner came to be rejected and the petitioner was directed to pay the entire amount of demand in twelve installments. It appears that the petitioner received a copy of the letter dated 27.7.2015 on 4.8.2015 informing the petitioner about the date of hearing of the appeal filed by the petitioner. On 5.8.2015, the petitioner informed the fourth respondent that it would be approaching the High Court for stay of the recovery of demand and that no coercive steps be taken till then. On 7.8.2015, the fourth respondent without considering the request for adjournment of the petitioner ordered the bank accounts of the petitioner to be attached (frozen). In view of the coercive measures adopted by the respondents, the petitioner requested the respondents to release the attachment of the bank accounts placing reliance upon the order passed by this court in the case of Surat Urban Development Authority in Special Civil Application No.11001 of 2015 wherein the court had granted interim relief staying the recovery of the demand. In the light of the coercive action taken by the respondents, the petitioner agreed to make payment under protest by way of installments, as directed by the respondents and, accordingly, the attachment of the bank accounts of the petitioner was lifted after recovering an amount of two installments from the petitioner. The petitioner has thereafter filed the present petition.

5. Heard Mr. Avinash Thacker, learned advocate for the petitioner and Mr. M. R. Bhatt, Senior Advocate, learned counsel with Mrs. Mauna Bhatt, learned senior standing counsel for the respondents.

6. It is an admitted position that the controversy involved in the present case is more or less identical to the controversy involved in the case of Surat Urban Development Authority v. Deputy Commissioner of Income Tax (Exemptions) in Special Civil Application No.11001 of 2015. A perusal of the orders impugned in the present petition reveals that identical orders have been passed in the case of Surat Urban Development Authority. The facts of the present case are more or less similar to that in the above case, except that in the present case, the respondent authorities have resorted to coercive recovery against the petitioner. A perusal of the orders passed

under section 220(6) of the Act reveals that in none of the orders, the authorities have applied their minds to the relevant facts necessary for deciding the stay petition under section 220(6) of the Act.

7. As noted hereinabove, the petitioner is a local authority constituted under the provisions of the Gujarat Town Planning and Urban Development Act, 1976. Under the circumstances, one fails to understand the approach adopted by the respondent authorities in resorting to coercive action against the petitioner, without granting it time to approach the higher forum. Having regard to the fact that for the prior period the income of the petitioner had been assessed at nil and the petitioner is sought to be brought into the tax dragnet only by resorting to the proviso to section 2(15) of the Act, it would be expected of the authorities to show some restraint till the issue is decided at least at the level of the first appellate authority.

8. By an order of even date, this court has partly allowed Special Civil Application No.11001 of 2015 by directing the petitioner therein to deposit ten per cent of the demanded amount and has further issued direction to the Commissioner (Appeals) to dispose of the appeal within a stipulated time frame. Since facts are more or less similar and the contentions raised before this court were also similar, a similar order is required to be passed in the present case. However, considering the fact that an amount equal to two installments has already been recovered from the petitioner which comes to about 25% of the amount demanded, no further amount is required to be directed to be deposited as condition for grant of stay.

9. In the light of the above discussion, the petition partly succeeds and is, accordingly allowed to the following extent. Having regard to the amount already paid by the petitioner, it shall not be treated as an assessee in default as contemplated under section 220(6) of the Act till the final disposal of the appeal before the Commissioner (Appeals). The Commissioner (Appeals) shall dispose of the appeal preferred by the petitioner under section 246 of the Act within a period of four months from the date of receipt of a copy of this judgment. The petitioner shall duly cooperate in the proceedings before the appellate authority. In case the Commissioner (Appeals) is not in a position to dispose of the appeal on account of default on the part of the petitioner, it would be open for the respondents to approach this court for modification of this order.

The petitioner shall serve a copy of this order upon the Commissioner (Appeals).

Rule is made absolute accordingly to the aforesaid extent with no order as to costs.

(HARSHA DEVANI, J.)

(A.G.URAIZEE, J.)

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