

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 12606 of 2014****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE JAYANT PATEL****and****HONOURABLE MR.JUSTICE S.H.VORA**

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

=====

HITECH OUTSOURCING SERVICES.....Petitioner(s)

Versus**INCOME TAX OFFICER - WARD 6 (2) & 2....Respondent(s)****Appearance:****MR B S SOPARKAR, ADVOCATE for the Petitioner(s) No. 1****MR NITIN K MEHTA, ADVOCATE for the Respondent(s) No. 1-3****RULE SERVED for the Respondent(s) No. 1 - 3**

=====

CORAM: HONOURABLE MR.JUSTICE JAYANT PATEL

and**HONOURABLE MR.JUSTICE S.H.VORA****Date : 19/01/2015****ORAL JUDGMENT****(PER : HONOURABLE MR.JUSTICE JAYANT PATEL)**

1. Rule. Mr.Nitin Mehta, learned counsel appears for respondents no.1 to 3 and waives notice. With the consent of the learned advocates appearing

for both the sides, the matter is finally heard.

2. The only question arise for consideration in the present matter is "Whether the order below the stay application could be passed by respondent no.2 without recording any reasons or not?"
3. The relevant facts show that after the AO passed the order of assessment and made the demand of tax of Rs.2,07,55,490/- for the assessment year 2011-2012, the petitioner carried the matter in appeal before the CIT(A) contending inter alia that it was only a typographical error for claiming the benefit under section 10A, though wrongly typed as 10B of the Income Tax Act, 1961 (hereinafter referred as the "Act"). It is also not in dispute that the petitioner preferred stay application. However, below stay application, vide order dated 25.08.2014 (Annexure D), the said stay application has been initially granted on the condition to furnish the bank guarantee, but subsequently, as the bank guarantee was not furnished, the application is dismissed. Under the circumstances, the present petition before this Court.
4. We have heard Mr.Soparkar, learned counsel appearing for the petitioner and Mr. Nitin Mehta, learned counsel appearing for the respondents.
5. The perusal of the order dated 28.07.2014 as well as order dated 25.08.2014 shows that when the application for stay came to be decided for the

first time, vide order dated 28.07.2014, the reasons are not mentioned for prima facie consideration of the merit or even on the aspect of balance of convenience. Nothing is recorded in the order as to why the ground of bank guarantee for grant of stay is taken into consideration. In our considered view, the order can be said to be non-speaking order since no reasons are mentioned. We may also record that the department has issued Circular No.1914 dated 02.12.1993 for the procedure to be followed while considering the matter for grant of stay application. Mr. Mehta, learned counsel for the respondent revenue has not been able to show any reasons which has weighed the authority for passing the order, but he submitted that by way of securing the amount, the bank guarantee is ordered to be furnished. In our view, when the matter is to be considered for grant of stay against any demand made of tax, it may be required for the authority to prima facie consider the merits and balance of convenience and also irreparable injury. None has been examined nor considered. In any event, as the appeal is pending, we leave it at that. Suffice it to observe that when the application is to be considered and decided, it would be required for the concerned authority to record the reasons and then to reach to the ultimate conclusion as to whether the stay should be granted or not and if yes on what condition. In absence of any

reasons, the order cannot be sustained.

6. In view of the aforesaid, the impugned order dated 28.07.2014 (Annexure-C) and the subsequent order dated 25.08.2014 (Annexure-D) based on the earlier order, are quashed and set aside with the further direction that the stay application shall stand restored to the CIT (Administration) and the stay application shall be considered on merits and appropriate decision after recording the reasons shall be passed. It would also be open to the petitioner to move CIT (Administration) for early hearing of the appeal and if such prayer is made, we are sure that the competent authority shall make attempt to dispose of the appeal. In any event, until fresh order is passed below the stay application and/or final order in appeal, whichever is earlier, the ad interim relief granted by this Court for not to take coercive action shall remain in operation.
7. Petition is allowed to the aforesaid extent. Rule made absolute accordingly.

(JAYANT PATEL, J.)

(S.H.VORA, J.)

bjoy