



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 12549/2009

Date of decision: 21st October, 2009

ONGC VIDESH LIMITED & ANOTHER Petitioners
Through: Mr. C.S. Aggarwal, Sr. Advocate
with Mr. Prakash Kumar, Advocate.

versus

DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 13 (1),
NEW DELHI & OTHERS Respondents

Through: Ms. P.L. Bansal, Advocate

% **CORAM:**

HON'BLE MR. JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

J U D G M E N T

A.K.SIKRI, J. (ORAL)

1. The Petitioner is a wholly owned subsidiary of Oil and Natural Gas Corporation, a Government company and, therefore, it is not in dispute that assessee is also a Government undertaking. It is engaged in the business of exploration, development and production of hydrocarbons outside India to augment the oil security of India.

2. In its return filed for the assessment year 2002-03, the Assessing Officer made substantial additions by disallowing various



deductions made by the Petitioner, which amounted to more than 395.85 crore. Simultaneously, the Assessing Officer also initiated penalty proceedings under Section 271 (1) (c) of the Income Tax Act.

3. The Petitioner preferred appeal against the assessment order passed by the Assessing Officer. The said appeal was partly allowed granting certain relief to the Petitioner herein. Not satisfied, the Petitioner appealed to the Income Tax Appellate Tribunal. This appeal was finally heard on 7th September, 2009 by the Tribunal and the judgment has been reserved. However, till date order has not been pronounced.

4. In the meantime, the Assessing Officer continued with the penalty proceedings and passed orders dated 30th September, 2009 levying a penalty of Rs.114.19 crore on the Petitioner company based on the additions confirmed by the CIT (Appeals) in the quantum appeal. This appeal was filed on 23rd April, 2009, however, that appeal was not being heard so far.

5. The Petitioner also approached to the Respondent No.1 seeking stay of the demand of penalty imposed by the Assessing Officer vide order dated 30th March, 2009. The Respondent No.1 passed order dated 24th April, 2009 staying the demand of penalty till 30th June, 2009 as neither the quantum of appeal was decided by the Tribunal nor appeal against the penalty before the CIT (Appeal) filed at time the Petitioner moved another application for extension of stay. The stay was extended by Respondent No.1 till 30th September, 2009. When the position remained the same as on 30th September, 2009 as well, the Petitioner company moved another application before



Respondent No.1 on 23rd September, 2009 seeking extension of stay, however, vide order dated 9th October, 2009, Respondent No.1 has declined to grant further stay.

6. Mr. Aggarwal has produced a copy of this order as communicated to the Petitioner by the Deputy Commissioner of Income Tax which *inter alia* reads as:-

“No further stay in this respect can not be granted. You are requested to make the payment of the demand of Rs.114.20 crore along with the interest u/s 220(2) of the IT Act within 7 days and show me the proof of payment of the same.”

7. It is obvious that no reasons are given while declining the request of the Petitioner to extend the stay. We may also note at this stage that the Petitioner has filed an application before the Additional Commissioner of Income Tax-13, New Delhi as well for grant of stay of the order. This application was filed on 13th October, 2009.

8. Having regard to the fact that the Petitioner is a Government undertaking; the quantum appeal is pending decision by the ITAT and the appeal against the penalty proceedings pending before the CIT (A) have not been heard so far, had initially granted stay of demand till 30th June, 2009 which was extended till 30th September, 2009; while rejecting the request for further stay no reason was assigned and the circumstances under which initially the stay was granted continued to be the same even as of today, we are of the opinion that till the application dated 13th October, 2009 filed by the Petitioner before the Additional Commissioner of Income Tax-13,



New Delhi is decided, no coercive steps be taken by the Respondents for recovery of the amount due.

9. Further having regard to the fact that the appeal against the penalty proceedings was filed by the Petitioner on 23rd April, 2009, we feel that the same should also be decided expeditiously by the CIT (A).

10. In case the application dated 13th October, 2009 preferred by the Petitioner is rejected, reasons in support of such a decision shall be given in the order. That order shall not be operative for a period of 15 days to enable to the Petitioner to seek further remedies as advised.

11. With these observations, the writ petition is disposed of.

A.K. SIKRI, J.

SIDDHARTH MRIDUL, J.

October 21, 2009

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