**IN THE INCOME TAX APPELLATE TRIBUNAL**
**MUMBAI 'K' BENCH, MUMBAI**

**[Coram: Pramod Kumar (Vice President),**
**and Kavitha Rajagopal (Judicial Member)]**

SA No. 116/Mum/2022
In ITA No.: 2125/Mum/2022
Assessment year: 2018-19

**Hindustan Lever Limited**
**(as the legal successor of Glaxo SmithKline Consumer Healthcare Limited)** **……Appellant**
*24th and 25th floor, One Horizon Centre*
*Golf Course Road, DLF Phase V*
*Gurgaon 122 002 [PAN: AACCS0144E]*

***Vs.***

**Deputy Commissioner of Income Tax**
**Circle 1(1)(1), Mumbai** **……...……Respondent**

**Appearances by:**
**Neeraj Jain** *for the applicant*
**Mahita Nair** *for the respondent*

Date of concluding the hearing : 16/09/2022
Date of pronouncing the order : 26/09/2022

**O R D E R**

**Per Pramod Kumar VP:**

1. By way of this application, the taxpayer seeks a stay on collection/ recovery of the income tax and interest demands, aggregating to Rs 172,47,58,360, raised by the respondent Assessing Officer in the course of framing an assessment under section 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961, for the assessment year 2018-19, which are currently impugned in appeal before of us and out of which not even a partial payment is made by the taxpayer.

2. When this stay application was brought up for hearing, it was noticed that the taxpayer had not paid any part of the disputed tax demands impugned in the appeal before us. In response to our question, learned counsel submits that, in view of the peculiar facts of this case and given the balance of convenience, the assessee does not intend to make payment of any part of the impugned demands even now, as it is not, on the facts and in the circumstances of the case, required either. Learned counsel submits that his prayer is for a blanket stay and that he is not in a position to, nor does he think he is required to, make payment of any part of the disputed tax demands. It is submitted that on the majority of the issues in the appeal, the issues are covered,

in favour of the assessee, mostly by the binding judicial precedents in the assessee's cases or the cases of the assessee's sister concerns. It is submitted that these judicial precedents show that the assessee has a very strong prima facie case in favour of the assessee, and the balance of convenience is in favour of the collection/recovery of the disputed demands being stayed till the disposal of the related appeal. It was in this backdrop that the leaned counsel was asked to address us on the scope of proviso to Section 254(2A), and, how, given these legal provisions, a blanket stay can be granted to an appellant before us.

3. Learned counsel begins by taking us through the provisions of Section 254(1), which provide that "**(t)he Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit**", and that, on these plains words of the statute, Hon'ble Supreme Court has, in the landmark judgment in the case of **ITO Vs M K Mohd Kunhi [(1969) 71 ITR 815 (SC)]**, categorically held that the Tribunal has inherent powers of granting a stay on collection/recovery of disputed tax and demands in fit and deserving cases, and that these powers are ancillary and incidental to the powers of disposing of an appeal. There is thus no reason to go beyond the scheme of Section 254(1) for examining the powers of the Tribunal of granting the stay. The powers granted to the Tribunal by Section 254(1) cannot be curtailed, diluted or otherwise narrowed down by a proviso to Section 254(2A), which has no bearing on the powers under section 254(1). It is then contended that there are several coordinate benches decisions which have granted blanked stay in fit and deserving cases. It is then pointed out that the issues in the appeal are squarely covered, by the binding judicial precedents, mostly in the assessee's own cases, and there are unambiguous guidelines of the Central Board of Direct Taxes that no recoveries can be made in such cases till the related appeals are disposed of. Our attention is invited to the CBDT instructions, though in the context of the stay of demand during the pendency of the first appeals, directing the Assessing Officer not to collect the demands, in respect of the issues which have been decided in favour of the assessee, in assessee's own case or the binding judicial precedents. Our attention is then invited to the judgments of the Hon'ble Court in which a stay on collection or recovery of disputed demands impugned in the appeal is granted during the pendency of appeals before us. Learned counsel then takes us through a chart to demonstrate how the issues in appeal are by and large covered in favour of the assessee by the binding judicial precedents, as also the prima facie merits of the case. Learned counsel then painstakingly takes us through the material on record to show the prima facie merits of his case, the balance of convenience being in favour of the disputed demands being kept in abeyance till the appeal before us is disposed of, and to justify that, on merits, facts and circumstances of the case warrant and justify the blanket stay, as prayed for.

4. Learned Departmental Representative, on the other hand, vehemently opposes the stay petition, pointing out that the matter has been examined by the Assessing Officer as also the Dispute Resolution Panel, as also the fact that the assessee has not paid any part of the disputed demand, and submits that given this position, and given the inherent limitations of the powers of the Tribunal, we should decline to grant the stay in this case unless the taxpayer actually pays at least 20% of the outstanding disputed demands. It is submitted that once there is an amendment in the statute itself, and the powers of the Tribunal are restricted to granting a stay only upon satisfaction of a certain condition, it cannot be open to us to grant a blanket stay. It is also submitted that some of the issues which are said to be covered, by binding judicial precedents in favour of the assessee, are covered by decisions in cases other than that of the assessee, and, strictly speaking, therefore, these are not covered issues as visualised by the CDBT instructions.

We are thus urged to decline to interfere in the matter- particularly as the assessee is not even inclined to pay 20% of the disputed demands impugned in appeals.

5. We have heard the rival contentions, perused the material on record and duly considered the facts of the case in the light of the applicable legal position.

6. We find that section 254(1) of the Act provides that "*(t)***he Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit**". While explaining the scope of the powers of the Tribunal under section 254(1), Hon'ble Supreme Court has indeed held, as rightly pointed out by the learned counsel, that "**In our opinion, the Appellate Tribunal must be held to have the power to grant stay as incidental or ancillary to its appellate jurisdiction. This is particularly so when section 220(6) deals expressly with a situation when an appeal is pending before the Appellate Assistant Commissioner, but the Act is silent in that behalf when an appeal is pending before the Appellate Tribunal. It could well be said that when section 254 confers appellate jurisdiction, it impliedly grants the 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 proceeding as will prevent the appeal if successful from being rendered nugatory**". Their Lordships, however, hastened to add that these powers cannot be used in a routine manner, and added that, "**A certain apprehension may legitimately arise in the minds of the authorities administering the Act that, if the Appellate Tribunal proceed to stay the recovery of taxes or penalties payable by or imposed on the assessees as a matter of course, the revenue will be put to great loss because of the inordinate delay in the disposal of appeals by the Appellate Tribunal. It is needless to point out that the power of stay by the Tribunal is not likely to be exercised in a routine way or as a matter of course in view of the special nature of taxation and revenue laws. It will only be when a strong prima facie case is made out that the Tribunal will consider whether to stay the recovery proceedings and on what conditions, and the stay will be granted in most deserving and appropriate cases where the Tribunal is satisfied that the entire purpose of the appeal will be frustrated or rendered nugatory by allowing the recovery proceedings to continue during the pendency of the appeal**". Be that as it may, that was a situation, as evident from these observations, when the statute did not vest any express powers in the Tribunal for grant of the stay on the collection/recovery of disputed demands during the pendency of the litigation before the Tribunal. As the legal position stands today, the first proviso to Section 254(2A), categorically *inter alia* provides that "…. **the Appellate Tribunal may, after considering the merits of the application made by the assessee, pass an order of stay in any proceedings relating to an appeal filed under sub-section (1) of section 253, for a period not exceeding one hundred and eighty days from the date of such order subject to the condition that the assessee deposits not less than twenty per cent of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnishes security of equal amount in respect thereof and the Appellate Tribunal shall dispose of the appeal within the said period of stay specified in that order**" *[Emphasis, by underlining, supplied by us]*. Hon'ble Supreme Court's inferring the Tribunal's power to grant the stay, in the absence of any specific statutory power to that effect, is one thing, and our dealing with a power statutorily recognized, even if implicitly, is quite another thing. In our considered view, once a statutory provision specifically provides that the Tribunal can only grant a stay subject to a deposit of not less than 20% of the disputed demand, or furnishing of security thereof, it cannot be open to us to grant a stay in violation of these basic statutory provisions.

The Income Tax Appellate Tribunal, being a creature of the statute itself, cannot question the reasonableness of this provision; that's a call to be taken by the Hon'ble constitutional Courts above. It is also elementary that the provisions of the law are to be so read as to make them workable rather than redundant. If we are to read the source of this Tribunal's powers for granting the stay, as section 254(1) on a standalone basis and in disjunction with the proviso to Section 254(2A), the said proviso will be rendered otiose. As observed by Hon'ble Supreme Court, in the case of **CIT Vs Hindustan Bulk Carriers [(2003) 259 ITR 449 (SC)]**, "**A construction which reduces the statute to a futility has to be avoided. A statute or any enacting provision therein must be so construed as to make it effective and operative on the principle expressed in maxim ut *res magis valeat quam pereat* i.e., a liberal construction should be put upon written instruments, so as to uphold them, if possible, and carry into effect the intention of the parties. [See Broom's Legal Maxims (10th Edition), page 361, Craies on Statutes (7th Edition) page 95 and Maxwell on Statutes (11th Edition) page 221.]**" Applying this principle, a coordinate bench of this Tribunal, speaking through one of us (i.e. the Vice President) and in the case of **ACIT Vs Papillon Investments Pvt Ltd [(2005) 4 SOT 234 (Mum)]** had observed that "**That is certainly not an interpretation which can be termed as *ut res magis valeat quam pereat,* i.e., to make the statute effective rather than making it redundant. As held by Hon'ble Supreme Court, in the case of S. Teja Singh *(supra)* a construction which results in rendering a provision redundant must be avoided. For this reason alone, the interpretation canvassed by the revenue is to be rejected**". The view so taken has been affirmed by the Hon'ble jurisdictional High Court, in the judgment reported as **CIT Vs Papillon Investments Pvt Ltd [(2012) 20 taxmann.com 201 (Bom)]**. What essentially follows from these discussions is that the powers of this Tribunal, under section 254(1), to grant a stay cannot be so interpreted as to make the first proviso to Section 254(2A) redundant.

7. While elaborating upon the need for harmonious construction of the statutory provisions, the oft-quoted treatise '**Justice GP Singh on the Principles of Statutory Interpretation (14th paperback edition @ page 159)**', has these words of advice:

> **…..It has already been seen that a statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute. Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between a section and other parts of the statute. It is the duty of the courts to avoid "a head-on clash" between two sections of the same Act and, "whenever it is possible to do so, to construe provisions which appear to conflict so that they harmonise"……..In the words of GAJENDRAGADKAR, J., "The sub-sections must be read as parts of an integral whole and as being interdependent; an attempt should be made in construing them to reconcile them if it is reasonably possible to do so, and to avoid repugnancy". As stated by VENKATARAMA AIYAR, J., "The rule of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is what is known as the rule of harmonious construction". That, the effect should be given to both, is the very essence of the rule. Thus, a construction that reduces one of the provisions to a "useless lumber" or "dead letter" "is not harmonious construction. To harmonise is not to destroy. ……**

8. Viewed thus, we should not interpret a provision of the law to make the other statutory provision within the same section ineffective and nugatory. However, that will precisely be the outcome if we are to hold that the Tribunal's powers of granting the stay, even after the enactment of the first proviso to Section 254(2A), are unfettered inasmuch as a stay can indeed be granted even in clear disharmony with the statutory conditions set out under the first proviso to Section 254(2A). The requirement with respect to the partial payment of demand or furnishing of security in respect thereof will thus be redundant. The law as it stood at the point of time when Mohd Kunhi's judgment was delivered has undergone significant change vis-à-vis the position prevailing as of now, and, therefore, the observations made by the Hon'ble Supreme Court are now to be read in the light of the subsequent enactment of the law. Unlike the Hon'ble Constitutional Courts above, it is not for this forum, i.e. the Income Tax Appellate Tribunal, to sit in judgment over the reasonableness of the legal provisions; the remedies lie elsewhere. We have to perform the role assigned to us within the framework of the law as it exists- whether made by the lawmakers or as interpreted by the Hon'ble judges above. When the statute does not give us the powers to grant a blanket stay, nor the Hon'ble Courts above hold so, it cannot be open to us to hold that we can grant a blanket stay- clearly contrary to the scheme of the law as visualised under the first proviso to Section 254(2A). We are, thus, not inclined to hold that we have the powers to grant any stay on collection/recovery of demands impugned in the appeal before us, in violation of the first proviso to Section 254(2A). The decisions that the learned counsel for the assessee has sighted before us in the context of the grant of stay under section 220(2), i.e. during the pendency of the first appeal, do not really apply in the present context, as Hon'ble Supreme Court itself and in Mohd Kunhi's case *(supra),* has observed that "**It may also be that, as a matter of practice prevailing in the department, the Commissioner or the Inspecting Assistant Commissioner, in exercise of administrative powers, can give the necessary relief of staying recovery to the assessee but that <u>can hardly be put at par with a statutory power as is contained in section 220(6) which is confined only to the stage of pendency of an appeal before the Appellate Assistant Commissioner.</u>**" These judicial precedents, which are specifically in the context of section 220(6) or with reference to the CBDT instructions issued in respect thereof, thus are contrary to the scheme of law as visualised by the Hon'ble Supreme Court in Mohd Kunhi's case *(supra).* Neither the statutory provisions, as they exist as of now, confer any powers of granting the blanket stay on collection or recovery of the disputed demands impugned in appeals before us, nor do we find any judicial precedents which dilute, curtail, or otherwise narrow down, the relevant restriction, on our power to grant a stay on collection/recovery of disputed demands impugned in appeal before us- as visualised in the first proviso to Section 254(2A). Learned counsel fairly submitted that though there are decisions of the Hon'ble Courts above granting a stay in the cases involved covered issues but in none of these cases, has it been specifically held that the Tribunal has the powers of granting blanket stay in such cases. No matter how fair, just or desirable it is to grant a blanket stay on collection or recovery of the demands on the issues covered by the binding judicial precedents in favour of the assessee, even if that be so, if we do not have the power to grant such a blanket stay, we have to live with this reality. An institution like this Tribunal, which is itself a creature of the Income Tax Act, 1961, has to perform its functions within the limitations that the Income Tax Act, 1961, has imposed on its functioning. As we say so, we make it clear that the law itself visualises that the payment of 20% of the disputed demands, impugned in the appeal before the Tribunal, cannot be viewed as a condition precedent for the grant of stay by the Tribunal, inasmuch as when the applicant "**<u>furnishes security of equal amount in respect thereof",</u>** the Tribunal can exercise its powers of granting a stay. While the issue of the reasonableness of the

nature of security cannot be at the unfettered discretion of the Assessing Officer, and it must meet the judicial scrutiny as and when so required. On the one hand, it has to be ensured that the limitations placed upon the powers of the Tribunal are respected, in letter and in spirit, and, on the other hand, it has to be equally ensured that, within this framework, substantial justice is to be rendered to the assessee and the rights of the assessee even to seek the legal remedies against any inappropriate use of power by the field authorities are zealously guarded. What constitutes reasonable security may vary from case to case. That is where a judicious and pragmatic approach by the field authorities is of utmost importance. Still, where their decisions, on this aspect, are less than appropriate, the Tribunal can surely judicially examine the same, or even decide, on its own, as to what is the nature of security to be offered by the assessee. In the present case, for the reasons we will set out in a short while, there is no need for us, as of now, to take a call on the nature of security to be offered by the assessee, even as the ususal precautions to safeguard legitimate rights of the assessee are being taken anyway.

9. Learned counsel hastens to add, at the fag end of the proceedings, that since almost all the issues are covered by the binding judicial precedents in favour of the assessee, a conditional stay may be granted by directing the Assessing Officer to grant a stay on collection/recovery of the demands impugned in appeal before us, after accepting security equivalent to 20% of the disputed demands and to his satisfaction, on the same lines as was ordered by a coordinate bench in the case of **Grasim India Ltd Vs DCIT [(2021) 126 taxmann.com 106 (Bom)]**. That is a case in which the stay was granted on the condition that the assessee was to provide, to the satisfaction of the Assessing Officer, security for the amount of 20% of the disputed demands impugned in the appeal. Having heard the learned Departmental Representative on this plea and having satisfied ourselves that the issues in appeal are by and large covered by the judicial precedents- including in the assessee's own case, we are inclined to accord the same treatment, and, consequently, grant a stay on collection/recovery of the disputed impugned demands, and interest thereon, aggregating to Rs. Rs 172,47,58,360, on the following conditions:

> (a) The assessee shall provide a reasonable security for an amount of Rs. 35 crores or more, within two weeks from the date of receipt of this order; Provided, however, in case the Assessing Officer is, for any reasons whatsoever, not satisfied with the security offered by the assessee, the Assessing Officer shall pass a detailed speaking order in respect of the same and setting out his position on the issue, and will give a two week notice to the assessee, before initiating any coercive recovery proceedings, so that the assessee can pursue appropriate legal remedies, if so advised, against the stand of the Assessing Officer;
>
> (b) The assessee will fully cooperate in expeditious disposal of appeal before this Tribunal and will not seek any unnecessary adjournment of the hearing, and, in case the bench is, at any point of time, of the view that the assessee is resorting to dilatory tactics, the stay will be liable to vacated forthwith; and
>
> (c) This stay will be in operation for 180 days from the date of this order, till the order on the related appeal is pronounced or till further orders- whichever is earlier.

10. The Registry is further directed, at the request of the parties, to fix this appeal for hearing, along with ITA No. 2125/Mum/2022, on 29th September 2022. The parties are also

directed to ensure that the filing of paper books etc, in the meantime, is completed. As this date is announced in the open court, no formal notice of hearing is to be issued.

11. In the result, the stay application is partly allowed in the above terms. Pronounced in the open court on the 26th day of September 2022.

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| **Sd/-** | **Sd/-** |
| **Kavitha Rajagopal** | **Pramod Kumar** |
| (Judicial Member) | (Vice President) |

**Mumbai, dated the 26th day of September 2022**

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| *Copies to:* | *(1)* | *The appellant* | *(2)* | *The respondent* |
| | *(3)* | *CIT* | *(4)* | *CIT(A)* |
| | *(5)* | *DR* | *(6)* | *Guard File* |

*By order etc*

*Assistant Registrar/ Sr PS*
*Income Tax Appellate Tribunal*
*Mumbai benches, Mumbai*