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

% **Order reserved on: 12 March 2024**
Order delivered on: 13 March 2024

\+ W.P.(C) 3603/2024, CM APPL. 14803/2024 (stay) & CM APPL. 14806/2024

INDIAN NATIONAL CONGRESS ..... Petitioner

Through: Mr. Vivek K. Tankha & Mr. Ravi Shankar Jandhyala, Sr. Advs. with Mr. Prasanna S., Mr. Vipul Tiwari, Mr. Inderdev Singh, Ms. Kanishka Singh, Mr. Nikhil Bhalla and Ms. Tarannu Cheema, Advs.

Versus

DEPUTY COMMISSIONER OF INCOME TAX CENTRAL - 19 & ORS. ..... Respondents

Through: Mr. Zoheb Hossain, Mr. Vipul Agrawal Sr.SCs with Mr. Sanjeev Menon Ms. Sakshi Shairwal, Jr.SCs, Ms. Abhipriya, Mr. Vivek Gurnani and Mr. Rajat Sen, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

YASHWANT VARMA, J.

1. The writ petitioner impugns the order dated 08 March 2024 passed by the **Income Tax Appellate Tribunal**[1] rejecting its

[1] ITAT

application for stay on the recovery of demand during the pendency of appeal. Before the ITAT, the petitioner appears to have addressed various contentions assailing the order of assessment as framed by the **Assessing Officer**[2] and which had subsequently been affirmed by the **Commissioner of Income Tax (Appeals)**[3].

2. Having heard learned counsels for respective sides at some length, according to us the only issue which would warrant a fresh trial by the ITAT emanates from the submission of the petitioner that it was entitled to a stay of the resultant demand upon deposit of 20% of the amount outstanding and which was cursorily rejected by the ITAT with it being observed that each application for stay is liable to be decided on its own facts and circumstances and a general prescription would not apply. Of equal significance is the fact of certain moneys having been recovered by the respondents in the interregnum and which too may have a bearing on the stand taken by the petitioners. The reasons which convince us to conclude that the above would appear to be the appropriate direction to frame stand set out in the subsequent parts of this decision. However, and before proceeding further, it would be apposite to notice the following essential facts.

3. The petitioner is stated to be a recognized National Political Party registered under Section 29A of the Representation of Peoples Act, 1951 and recognised as such by the Election Commission of India. The case itself pertains to **Assessment Year**[4] 2018-2019 and in respect of which the due date for submission of a return under Section 139(1) of the **Income Tax Act, 1961**[5] was 31 December 2018. The petitioner

[2] AO
[3] CIT (A)
[4] AY
[5] Act

filed its Return of Income on 02 February 2019 declaring nil income after claiming exemption of INR 199,15,26,560/- under Section 13A of the Act. In the course of assessment, notices under Section 143(2) and 142(1) of the Act came to be issued on 23 September 2019 and 27 January 2020 respectively. The petitioner also appears to have been placed on notice and intimated on 18 March 2020 of a proposed demand of INR 94,44,94,212/- consequent to denial of its claim of exemption under Section 13A of the Act.

4. An order of assessment ultimately came to be framed under Section 143(3) on 06 July 2021 and in terms of which the income of the petitioner came to be determined at INR 199,15,26,560/- consequent to the rejection of its claim for exemption under Section 13A. The aforesaid assessment was principally based on the AO coming to the conclusion that the petitioner had violated the provisions of the Second Proviso to Section 13A by not filing its return of income within the time prescribed under Section 139(4B) of the Act. The AO also held against the petitioner with respect to a purported violation of clause (d) of the First Proviso to Section 13A, since according to it, the petitioner had received donations of INR 14,49,000/- in cash from various persons with each donation being more than INR 2000/-. Upon the aforesaid assessment being completed, a demand notice under Section 156 came to be issued on 06 July 2021.

5. In the meanwhile, challenging the order of assessment, the petitioner moved the CIT(A) on 06 August 2021. It subsequently, and more particularly on 20 October 2021, moved an application for stay of recovery of demand before the AO. That application came to be disposed of by the AO on 28 October 2021 with a direction to the

petitioner to deposit 20% of the outstanding tax liability. It becomes pertinent to note that the aforesaid order does not appear to have been either questioned or assailed by the petitioner. It may be additionally noted that the AO while passing the aforesaid order had clearly provided that in case the petitioner fails to deposit 20% of the total demand, it would be treated as an "assessee in default". The petitioner admittedly failed to comply with the aforesaid condition as imposed by the AO.

6. No further steps appear to have been taken by the petitioner subsequent thereto and consequently on 09 January 2023, the respondents issued a letter requiring it to deposit and liquidate the outstanding tax liability. This led to the petitioner moving a second application for stay under Section 220(6) before the AO on 27 January 2023. However, and as would appear from the record, the appeal itself came to be dismissed by the CIT(A) on 28 March 2023. That application was thus rendered infructuous.

7. Aggrieved by the order passed by the CIT(A), the petitioner approached the ITAT and filed an appeal on 24 May 2023. During the pendency of that appeal, and more particularly on 13 February 2024, the respondents proceeded to issue demand notices under Section 226(3) of the Act. It was this action that led to the petitioner finally moving a stay application before the ITAT in its pending appeal on 14 February 2024.

8. During the pendency of the proceedings before the ITAT, the respondents, pursuant to the initiation of action under Section 226 of the Act, also appear to have obtained bank drafts amounting to INR 65,88,81,874/- from branches of various scheduled banks where the

petitioner maintains its accounts. By the time, we concluded hearing on the instant petition and reserved orders thereon, we were informed by Mr. Hossain, that the aforesaid bank drafts have been duly encashed.

9. Appearing for the writ petitioner, Mr. Tankha learned senior counsel, contended that the ITAT had clearly erred in upholding, at least on a prima facie examination, the view as was taken by the AO as well as the CIT(A). Mr. Tankha submitted that the respondents have incorrectly proceeded on the premise that there was a failure on the part of the petitioner to comply with the conditions imposed by Section 13A of the Act. Insofar as the submissions resting upon the filing of a return under Section 139 of the Act is concerned, the petitioner appears to have contended that it was entitled to submit a return within the extended time period prescribed as opposed to Section 139(4B) of the Act. While dealing with the aforesaid contention, the ITAT has observed as follows: -

> "31. We have considered the above plea. The third Proviso, as reproduced by us in the earlier part of this order, was inserted in Section 13A by the Finance Act, 2017 with effect from 1st April, 2018. As per the Memorandum explaining the provisions introduced in the Parliament, it was noted that Political Parties were required to file their return of income in terms of Section 139(4B) of the Act; So, however, the filing of the return was not a condition precedent for availing exemption under Section 13A of the Act. The Proviso was introduced to make it mandatory for a Political Party seeking exemption under Section 13A of the Act to furnish its return of income for the relevant year on or before the due date under section 139.
>
> 32. In this context, the learned Senior Counsel submitted that since Section 139(4B) of the Act provides that "all the provisions of this Act" shall apply to a return filed by a political party "as if it were a return furnished under subsection (1) of Section 139", therefore, it would encompass sub-section (4) of Section 139 of the Act also.
>
> 33. In our view, the said argument is quite misplaced as it would negate the purpose for which the third Proviso has been inserted by

> the Finance Act, 2017. Moreover, the third Proviso contains the expression "the due date under section 139" and a plain reading of the provisions shows that the due date for the purpose of Section 139 is defined in terms of Explanation 2 below Section 139 (1) of the Act and that such 'due date' is not controlled by the provisions of sub-section (4) of Section 139, which merely permits filing of belated returns."

10. Proceeding further, the ITAT has also on a prima facie consideration negatived the contentions which were addressed with reference to clause (d) of the First Proviso to Section 13A of the Act. While dealing with this question, it has held as under: -

> "39. After having perused the orders of the authorities below as well as other material, it is borne out that it is only during the assessment proceedings that the assessee has sought to make a distinction between 'voluntary contributions' and 'Donations'. The Assessing Officer has recorded a finding, after examining the books of account that all the contributions have been recorded as 'Donations' and the distinction canvassed by the assessee is not supported by the account books maintained. The report filed by the assessee with the Election Commission of India in terms of Section 29C(l) of The Representation of the People Act, 1951 dated 29th September, 2014 also does not support any distinction between receipt of Voluntary Contributions and Donations. All these aspects, in our view, do not inspire any confidence in the plea of the assessee that there is a difference between Voluntary Contributions and Donations. No doubt the details of Rs.14,49,000/- maintained by the assessee is compliant with the requirements of clause (b) of the Proviso, so however, it does not distract from the fact that clause (d) of the first Proviso has been contravened inasmuch as Donations in excess of Rs.2,000/- have been received by the assessee in cash.
>
> 40. We may also analyze this aspect from another angle. Clause (b) of the first Proviso requires that in respect of each voluntary contribution in excess of twenty thousand rupees, a Political Party is required to keep and maintain a record of such contribution including the Name and address of the person who has made such contribution; whereas clause (d) of the first Proviso mandates that no Donation exceeding two thousand rupees ought to be received by the Political Party otherwise than by an account payee cheque or bank draft or through electronic clearing system or through electoral bond. Thus, while clause (b) obligates a Political Party to maintain the record and details of the voluntary contributions recorded in excess of twenty thousand rupees, clause (d) restricts a Political Party from receiving Donation in excess of two thousand rupees otherwise than

by an account payee cheque or bank draft or through electronic clearing system or through electoral bond.

41. In our considered view, it is incongruent for a Political Party to canvass that inspite of accepting Donations in cash exceeding Rupees two thousand each, clause (d) is not violated merely because it has maintained the details as per clause (b) of the first Proviso. Each of the conditions laid down in clauses (a), (b), (c) and (d) of the first Proviso are to be mandatorily complied with in order to claim exemption under Section 13A of the Act, as per the ratio of the judgment of the Hon'ble Delhi High Court in the case of the assessee (supra). For a reference, the following discussion by the Hon'ble High Court is relevant: -

> "77. . . . . *While it is true that income by way of voluntary contributions* is *not identified* as *a separate head of income in Section 14 of the Act, the legislative intent was not to exclude it altogether from the taxable income. It would be excluded only subject to fulfilment of the conditions stipulated under Section 13A of the Act. It could never have been the legislative intention that voluntary contributions received by a political party that does not satisfy the requirement of Section 13A of the Act - viz., maintaining books of accounts, keeping a record of voluntary contributions in excess of Rs. 10,000 and getting the accounts audited - would be exempt from tax. If the above conditions are not fulfilled, the income of a political party by way of voluntary contributions would be included in the taxable income."*

42. In the present case, the detail of Rs.14,49,000/- clearly show that each contribution is in cash in excess of Rs.2,000/-, thereby reflecting clear violation of clause (d) of the first Proviso. At this point, we are conscious of the statement made by the learned Senior Counsel at Bar that out of the sum of Rs.14,49,000/, a sum of Rs.3,00,000/- has been received by transfer through RTGS. However, even after considering the same, violation of clause (d) to the first Proviso is palpable qua the balance of the amount."

11. Yet another argument which appears to have been addressed for the consideration of the ITAT was with respect to the total income having been computed without the benefit of expenditure incurred being factored in or taken into account. Insofar as this issue is concerned, the ITAT has held that the same stood answered against the petitioner in light of a judgment rendered by this Court in its own case

as would be evident from the following: -

> "46. Another aspect which has been argued by the learned Senior Counsel is that the total income has been computed without giving benefit of the expenditure incurred by the assessee for attaining its aims and objects and, therefore, the impugned tax demand has been unjustly raised. We find that this aspect does not require much indulgence from our side inasmuch as the same has been authoritatively negated by the Hon'ble Delhi High Court vide its Order dated 23rd March, 2016 (supra). As per the Hon'ble High Court, once the income by way of voluntary contributions is not excludible from total income on account of denial of exemption under Section 13A of the Act, the same is liable to be treated as "income from other sources". Thereafter, the question of allowability of expenditure incurred by a Political Party for attaining its aims and objects was declined by the Hon'ble Delhi High Court in the following words: -
>
> *"Expenditure of a political party*
>
> *123. Here it is important to address another submission made on behalf of the Revenue which finds favour with the court. Under the head "Income from other sources", no expenditure can be allowed as a deduction on the ground that the expenditure has been incurred by a political party for attaining the* aims *and objects of political party. As rightly pointed out, the only deduction is undersection 57(iii) of the Act and this cannot be granted since the Indian National Congress (I) did not place on record the factual basis for such a claim.*
>
> ***124. <u>The legal position is that no deduction can be allowed with respect to the expenditure incurred by the political party for any purpose whatsoever if it fails to comply with the basic requirements of section 13A of the Act.</u>***
>
> *125. Therefore, the only way to proceed in the present matter is to wholly disallow the expenditure claimed by the Indian National Congress (I) as relatable to "income from other sources". On the receipts side, the Revenue will simply have to go by whatever is disclosed by the Indian National Congress (I) as income by way of voluntary contributions in the return as originally filed and treat that as income from other sources.*
>
> *126. Consequently, the court disagrees with the decision of the Commissioner of Income-tax (Appeals) restricting the expenditure of the assessee to 60 per cent of the amount claimed and order of the Commissioner of Income tax (Appeals) and the Income-tax Appellate Tribunal to that extent are set aside."*

(underlined for emphasis by us)"

Although an appeal against the aforenoted judgment of this Court appears to have been preferred before the Supreme Court, undisputedly no interim order operates thereon. The respondents also assert that the petitioner had failed to maintain a distinction between voluntary contributions and donations in its books of account.

12. Arguments also appear to have been addressed before the ITAT of the action initiated by the respondents being actuated by mala fides. Dealing with the aforesaid, the ITAT has noted as under: -

> "47. We may now refer to the opening argument made by the learned Senior Counsel for the Applicant on the issue of hardship created for the assessee by the recovery proceedings initiated under Section 226(3) of the Act on 13th February, 2024. According to him, the action of the Assessing Officer was lacking in *bona fides* as it had been initiated close to the ensuing Parliamentary Elections. This aspect of the matter is quite subjective, and we have considered the same only for the limited purpose of evaluating the merit of the extant interim Application before us. The chronology of events, which have been canvassed before us starting from the passing of the assessment order on 6th July, 202l and culminating with the issuance of notice under section 226(3) of the Act on 13th February, 2024, in our view, does not justify an inference that the recovery proceedings have been done in an undue haste. In the first point of time, when the assessee approached the Assessing Officer for stay during pendency of the Appeal with the CIT(Appeals), the Assessing Officer was willing to keep the recovery in abeyance requiring the assessee to pay 20% of the disputed demand. Even after the rejection of Appeal by the CIT(Appeals) on 28th March, 2023, no recovery action seems to have been initiated by the Assessing Officer to recover the demand till 13th February,2024. On the other hand, the assessee has also not demonstrated its keenness to expeditiously settle the issue inasmuch as the Appeal of the assessee pending with the Tribunal had come up for hearing on three occasions, viz.,21st September, 2023, 28th November, 2023 and 5th February, 2024 and, on each of the occasion, the record of proceedings reveal that the appellant-assessee was not prepared and sought adjournment. Now, the Appeal is fixed for hearing on 23rd April, 2024 before the regular Bench. Even in the course of hearing of the present petition, it was put across to the parties that since extensive arguments were being advanced, the Appeal pending before the Tribunal may be taken up for hearing on merits to facilitate an expeditious disposal of

> the same. The learned Standing Counsel had no objection to the same, while the learned Senior Counsel appearing for the Applicant did not opt for the same. Be that as it may, we are pointing out the aforesaid only to emphasize that the power to grant the stay is exercised inter alia, in cases where a delay can be expected in the determination of the pending Appeal in the due course. So however, in the instant case, the delay in determination of Appeal, if any, is not attributable to the Revenue."

13. Having perused the judgment rendered by the ITAT, we find that it has accorded due consideration upon the merits of the challenge which stood raised. It would, therefore, be incorrect to accept the submission that the ITAT had failed to apply its judicial mind for the purposes of a prima facie evaluation of the questions which stood posited. We are cognizant of the ITAT while considering an application for stay being obliged to consider the existence of a prima facie case, undue hardship as well as examining the likelihood of the assessee ultimately succeeding in its challenge. At this stage, the ITAT is called upon to only examine and assess the challenge raised by the assessee from a prima facie point of view and in order to form a tentative opinion with respect to the merits of the case. That formation of opinion is what enables it to consider the grant of stay and the terms, if any, on which the assessee is liable to be placed. Tested on those principles, we fail to find any fundamental infirmity in the prima facie conclusions that have come to be rendered by the ITAT.

14. The order reflects the ITAT having conferred due consideration upon the various grounds of challenge which stood raised. The view taken in any case does not appear to suffer from any manifest illegality which would have warranted us invoking our powers of judicial review. The Court thus desists from entering any further observation in this respect being conscious of the pendency of the principal appeal and in order to avoid its outcome being influenced by any remark or statement

appearing in this order.

15. Though needless to state, we only observe that our refusal to interfere with the view expressed by the ITAT is based solely on the parameters of judicial review which apply and the present order thus not being liable to be construed as an affirmation of the view expressed by the ITAT and relating to the merits of the appeal.

16. As we read the impugned order, we come to the firm conclusion that the ITAT has carefully examined the various contentions and challenges which stood raised and has expressed a prima facie opinion and which alone was required while considering an application for stay. We are also of the firm opinion that it would be wholly inappropriate for us at this stage to either re-examine or reconsider those questions in extenso bearing in mind the limited evaluation which the ITAT was liable to undertake coupled with the fact that the principal appeal is pending consideration before the ITAT. We find no justification to tread down this path, especially, and more so when it cannot be said that the view as taken by the ITAT was one which was either implausible, wholly untenable or one which suffered from a manifest perversity.

17. We also take note of the undisputed position which emerges from the record and which would appear to indicate unequivocally that although a notice of demand came to be first issued as far back as on 06 July 2021 and the first application for complete stay came to be rejected on 28 October 2021, no concrete steps appear to have been taken by the petitioner to either consider securitizing the outstanding demand or to seek appropriate interim protection. It admittedly failed to comply with the condition which was imposed by the AO in terms of its order of 28

October 2021. In fact, no step appears to have been taken or pursued for almost two years till a demand letter came to be issued on 09 January 2023. Although, the CIT(A) had dismissed the appeal on 28 March 2023 and the petitioner had instituted the appeal before the ITAT on 24 May 2023, a stay application in that appeal came to be filed only on 14 February 2024. This would clearly appear to suggest that the petitioner has been far from vigilant and clearly lax in pursuing the legal remedies which were otherwise available.

18. As we read the impugned order, what ultimately appears to have weighed upon the ITAT is of the petitioner having firstly been remiss in taking peremptory steps in respect of a demand which had remained outstanding right from 2021. It failed to abide by the conditions which had been imposed by the AO while considering its application under Section 220(6) of the Act. The petitioner appears to have fallen into deep slumber and stood reawakened only in January 2023 when a notice of demand came to be raised. Even though an appeal against the order of the CIT(A) came to be instituted before the ITAT in May 2023, it chose to move a stay application in that pending appeal only in February 2024. The problems that beset the petitioner today are thus, and to a large extent, of its own making. The ITAT, in our considered opinion, was consequently justified in rejecting the allegation of the action being either motivated or actuated by mala fides.

19. We are also constrained to take note of the lament of the ITAT when it observes that the opportunity of a final hearing on the appeal itself was also not accepted. Of equal significance are the adjournments which were sought at the behest of the petitioner on different dates in September and October 2023 and again in February 2024. The appeal

thus appears to have been called on numerous dates prior to the initiation of coercive steps on 13 February 2024 under Section 226 of the Act. An assessee in default can neither be permitted nor expected to adopt such a casual or lackadaisical approach while faced with a tax demand which had remained outstanding right from 2021 and in respect of which no protective measures were sought or adopted for almost two years between 2021 and 2023.

20. It is the aforesaid conduct of the petitioner which appears to have led to the ITAT perfunctorily negativing the argument based on the **Office Memorandum**[6] No. 404/72/93-ITCC dated 31 July 2017 issued by the Central Board of Direct Taxes with respect to Instruction No. 1914 dated 21 March 1996.

21. Before us, Mr. Tankha sought to vehemently contend that the petitioner had in fact offered to securitize the outstanding demand before the ITAT and had in that regard placed reliance upon various decisions and orders rendered in the context of the OM. According to learned senior counsel, despite submissions on those lines having been advanced, the ITAT has chosen to unceremoniously reject the same. According to Mr. Tankha, the petitioner had also raised the issue of financial hardship which too the ITAT failed to consider.

22. However, as we read the order impugned, the matter does not appear to have proceeded along those lines before the ITAT. The tone and tenor of submissions clearly appear to have been concentrated upon the merits of the assessment order. Although the issue of payment of 20% of the outstanding demand appears to have been raised, the same came to be summarily rejected by the ITAT in cryptic terms.

[6] OM

Notwithstanding the above, it becomes pertinent to observe that the 20% deposit which is spoken of in the OM dated 31 July 2017 is not liable to be viewed as a condition etched in stone or one which is inviolable. The OM merely seeks to provide guidance to the authorities to bear in mind certain aspects while considering applications for stay of demand pending an appeals remedy being pursued. The OM is not liable to be read as conferring an indefeasible right upon the assessee to claim a stay of a tax liability by merely offering or consenting to deposit 20% of the outstanding liability. Ultimately, it is for the authorities to examine and consider what amount would be sufficient to securitise the interest of the Revenue and thus a just balance being struck. The quantum of the deposit that would be required to be made would ultimately depend upon the facts and circumstances of each case. This is evident from the order of the Supreme Court in **Principal Commissioner of Income Tax 5 and others Vs. LG Electronics India Private Limited**[7] and which is extracted hereunder: -

> "1. Delay condoned. Leave granted.
>
> 2. Having heard Shri Vikramjit Banerjee, learned ASG appearing on behalf of the appellant, and giving credence to the fact that he has argued before us that the administrative circular will not operate as a fetter on the Commissioner since it is a quasi-judicial authority, we only need to clarify that in all cases like the present, it will be open to the authorities, on the facts of individual cases, to grant deposit orders of a lesser amount than 20%, pending appeal.
>
> 3.The appeal is disposed of accordingly. Pending application, if any, shall stand disposed of."

23. The position which thus emerges is that while 20% is not liable to be viewed as an entrenched or inflexible rule, there could be circumstances where the respondents may be justified in seeking a deposit in excess of the above dependent upon the facts and

[7] (2018) 18 SCC 447

circumstances that may obtain. This would have to necessarily be left to the sound exercise of discretion by the respondents based upon a consideration of issues such as prima facie, financial hardship and the likelihood of success. This observation we render being conscious of the indisputable position that the OM applies only upto the stage of the appeal pending before the CIT(A) and being of little significance when it comes to the ITAT.

24. Insofar as the question of financial hardship is concerned, we also take note of the contention of Mr. Hossain who had drawn our attention to the following details set out in paragraph 55 of his submissions as placed for the consideration of the ITAT: -

> "55. Further a bare perusal of the latest IT Return of the assessee for AY 2023-24 would show that the assessee has a corpus of Rs. 6,57,27,94,031/-, net fixed assets to the tune of Rs.3,40,30,55,660/- and cash and cash equivalents to the tune of Rs.3,88,11,58,487/-. Hence, it is submitted that no hardship would be caused by the recovery of the income tax dues for AY 2018-19."

According to Mr. Hossain, the above facts as alluded to are without prejudice to the stand of the respondent that the aspect of financial hardship was one which was neither addressed nor raised before the ITAT.

25. All that we additionally deem appropriate to observe is that merely because the AO had disposed of the stay application on 28 October 2021 or the fact that the petitioner failed to comply with the conditions so imposed, would not detract from the right of the ITAT to independently consider whether appropriate interim measures were liable to be framed for the purposes of protecting the interest of the assessee and at the same time securitizing the outstanding demand.

26. In the end, we take note of an amount of Rs. 65.94 crores having been recovered by the respondents in the interregnum and that amount

translating to roughly 48% of the outstanding demand. This changed circumstance is an aspect which, in our considered opinion, would merit consideration by the ITAT in case the petitioner chooses to move a fresh application for stay.

27. Notwithstanding the refrain of the ITAT and which had also taken note of the continued adjournments which were sought by the writ petitioner as well as it having turned down its offer for the appeal itself being put down for final hearing, we deem it appropriate to accord liberty to the writ petitioner to move a fresh application for stay before the ITAT bearing in mind the developments which have occurred in the meanwhile including that of an amount of Rs.65.94 crores having been recovered by the respondents pursuant to encashment of the bank drafts.

28. Whether the aforesaid circumstance would merit protective measures being granted in respect of the balance outstanding demand, and if so to what extent, is an issue which must necessarily be considered by the ITAT in the first instance it being the tribunal which is in seisin of the principal appeal. We thus refrain from rendering any conclusive opinion in this respect and leave this aspect open for the consideration of the ITAT.

29. Accordingly, while we find no ground to interfere with the order impugned, we dispose of the writ petition according liberty to the petitioner to approach the ITAT by way of a fresh stay application bringing to its attention the change in circumstances noticed above. An application, if so moved, may be considered by the ITAT with due expedition.

30. All rights and contentions of respective sides are kept open for the consideration of the ITAT.

YASHWANT VARMA, J

PURUSHAINDRA KUMAR KAURAV, J

MARCH 13, 2024/*neha*