

**[Inland Revenue Appellate Tribunal]**

*Before Ch. Anwaar ul Haq, Judicial Member and  
Muhammad Riaz, Accountant Member*

**ISLAMABAD ELECTRIC SUPPLY COMPANY LTD. (IESCO)**

versus

**COMMISSIONER OF INLAND REVENUE,  
RTO, ISLAMABAD**

S.T.As. Nos. 137/IB, 22/IB and 141/IB of 2013, decided on 26th August, 2013.

M.M. Faisal Banday, FCA for KPMG Taseer Hadi and Co. for Applicant.

Zia Ullah Khan, D.R. for Respondent.

Date of hearing: 23rd August, 2013.

**ORDER**

CH. ANWAAR UL HAQ (JUDICIAL MEMBER).---Through this order we intend to decide the above captioned three applications in the following manner.

**M.A. (Stay) S.T.A. No.137/IB of 2013**

2. This stay application dated 19th August 2013 has been filed in S.T.A. No.328/IB of 2012 against the recovery notice dated 7-8-2013 issued under section 48(1)(b) of the Sales Tax Act, 1990 read with Rule 71(2)(b) of the Sales Tax Rules, 2006 for outstanding Government dues amounting to Rs.1,932,631,670 along with default surcharge.

Rs.1,603,103,431 (calculated upto 31-7-2013) and penalty of Rs.101,982,920 outstanding against the applicant/registered person, with the following prayer:--

*"In view of the facts highlighted Supra it is humbly prayed that your Hounor may kindly grant stay against recovery proceeding initiated by the tax authorities for a period of six months or until such date when appeals are decided by the Honourable ATIR. In the meantime, the tax authorities may please be directed to withdraw or halt the recovery proceeding initiated till disposal of appeal by the Hounorable ATIR".  
(emphasis supplied)*

This stay application has been signed by the applicant company and its contents were supported by an affidavit of Mr. Najam Javeed, Finance Director of applicant IESCO. So, keeping in view of the aforesaid prayer of the applicant company supported by an affidavit its officer, we have thoroughly perused the relevant record and found that the applicant company had already enjoyed stay period of 120 days granted by this Tribunal during the pendency of main appeal, but this fact was concealed in the present stay application. Further main appeal bearing S.T.A. No.328/IB of 2012 has already been decided by this Tribunal vide order dated 9-4-2013. Hence, no appeal is pending adjudication before this Tribunal. The present application of the applicant is misconceived; therefore, the same is rejected being devoid of merit.

**MA(R) S.T.A. No.22/IB/2013**

3. Through this application/letter dated 13-5-2013, rectification has been sought in respect of the order dated 9-4-2013 passed in S.T.A. No.328/IB/2012. During hearing of the case, it is noticed that the application has been filed by one Mr. M.M. Faisal Bandy partner of Messrs KPMG Taseer Hadi & Co, a Chartered Accountants Firm, on its letter head and addressed to the Registrar of this Tribunal. For reference, said application/letter is reproduced hereunder:--

***"KPMG Taseer Hadi & Co  
Chartered Accountants***

***Confidential***

***The Registrar  
Appellate Tribunal Inland Revenue  
2n Floor, Shaheed-e-Millat Secretariat  
Jinnah Avenue  
Islamabad***

***13 May 2013***

Dear Sir,

**Islamabad Electric Supply Company Ltd.  
Rectification application against Appellate Judgment S.T.A.  
No. 328/IB/2012 under section 57 of the Sales Tax Act, 1990.**

This is with reference to the combine Appellate Order S.T.A. No.328/IB/2012, S.T.A. No. 277/IB/2012 and M.A. Stay (Ext.) No.52/IB/2012 dated 09 April 2013 (the Appellate Order) passed by the learned Appellate Tribunal Revenue Islamabad (ATIR) against the Order-in-Appeal No. 2 of 2012 dated 2 July 2012 (the OIA) and 95 of 2012 dated 26 June 2012 respectively, orders passed by the Commissioner Inland Revenue (Appeal-I), Islamabad [CIR(A)] in case of Islamabad Electric Supply Company [the company] in relation to audit for tax period from July 2007 to June 2008 [the Period] and electricity supply to Azad Jammu and Kashmir Government by the Company. On review of the Appellate Order, we have observed that there is a mistake apparent from record which solicits action under section 57 of the Sales Tax Act, 1990 [the ST Act].

Kindly note that hearing of Miscellaneous Stay Application M.A. (Ext.) No. 52/IB of 2012 for extension in time was fixed for 9 April 2013 and at the time of hearing it was requested to the learned Bench that along with stay hearing the main appeal S.T.A. No. 277/IB/2012 in the case of AJ&K supplies may please be heard to which the members agreed as the same matter stand resolved earlier through S.T.A. No. 65/IB/2011 dated 07 September, 2011.

Please note that hearing of the appeal S.T.A. No. 328/IB/2012 was fixed for 7 May, 2013 which was adjourned from 04 April, 2013. We draw your kind attention towards the fact that hearing of the appeal S.T.A. No. 328/IB/2012 never took place before the honorable Bench. However while passing the Appellate Order the appeal S.T.A. No. 328/IB/2012 was inadvertently mentioned in the Appellant Order. We understand that this omission may have been caused due to inadvertence.  
(Emphasis supplied)

We would further like to add over here that the appeal S.T.A. No. 328/IB/2012 was filled on various issues raised thorough the ground of appeals filed against the Order-in-Appeal No. 95 of 2012 dated 26 June 2012 passed by the CIR (A), in which one of various issues is supplies of electricity to AJ&K Government. Copy of the grounds of appeals is enclosed for case of reference.

In light of the foregoing facts we request through your office to the learned Bench to kindly rectify the Appellate Order in terms of section 57 of the Sales Tax Act and fresh hearing notice may kindly be issued in relation to hearing of the appeal S.T.A. No. 328/IB/2012. (Emphasis supplied)

We also request for personal hearing before disposal of this request.

Thanking you in anticipation.

Yours sincerely,

Sd/-

M.M. Faisal Banday  
Partner"

4. After perusal of the case file, it was further revealed that:--
- (i) The application/letter has been filed without any instructions from the registered person, as it was not supported by any Authority letter or Power of Attorney from the registered person.
  - (ii) Through letter under discussion filed by an unauthorized person, it was alleged that the hearing of appeal S.T.A. No. 328/LB/2012 never took place before the Bench. Whereas, the record of this Tribunal reflect that said appeal was heard time to time and hearing dates were also noted by the learned AR. It is well settled principle of law that "presumption of truth attached to the official record unless proved otherwise". On contrary, serious allegations and other contents of the so called rectification application are not supported by any duly sworn affidavit of the registered person, as required under rule 13 of the Appellate Tribunal Inland Revenue Rules, 2010 (ATIR Rules) and the provisions of Order VI, Rule 15 of the C.P.C., 1908 read with High Court Rules and orders.
  - (iii) Application has neither been signed by the registered person nor it bears the seal of the public limited company/registered person.
  - (iv) No Court fee has been affixed on the face of the application/letter, as required under the schedule-II of the Court Fee Act, 1870.
  - (v) The so called application/letter has been addressed to the Registrar of this Tribunal, which is contrary to the provisions of sections 2(2) and 130 of the Income Tax Ordinance, 2001 and the ATIR Rules.

- (vi) The application has been filed without impleading the necessary and proper parties as required under Rule 9 of the ATIR Rules.
- (vii) The application has been filed without annexing the necessary documents as required under Rule 11 of the ATIR Rules.
- (viii) The application was filed on 14-5-2013, under section 57 of the Sales Tax Act, 1990. At the relevant time section 57 read as under:-

*"57. Correction of clerical errors, etc.-- Clerical or arithmetical errors in any assessment, adjudication, order or decision may, at any time, be corrected by the officer of Inland Revenue who made the assessment or adjudication or passed such order or decision or by his successor in office:*

*Provided that before such correction, a notice shall be given to the registered person, or to a person affected by such correction." (emphasis supplied)*

The bare reading of the aforesaid provisions of law clearly provides that the said section relates to correction of clerical or arithmetical error in any assessment, adjudication, order or decision passed by the Officer of Inland Revenue. The expression "Officer of Inland Revenue" has been defined in section 2(18) of the Sales Tax Act, 1990 which means an officer appointed under section 30 of the Act. The order passed by this Tribunal cannot be considered as order passed by the Officer of Inland Revenue and hence, does not come within the ambit of the said provisions of section 57 *ibid*.

5. On 21-8-2013 at the time of presentation of subject files before this bench, on transfer from other bench of this Tribunal, in the presence of learned DR, the learned representative of Messrs KPMG was instructed by this bench to amend their pleadings and bring the same in conformity with the provisions of ATIR Rules, but it remained unnoticed.

6. At the time of hearing Mr. M.M. Faisal Banday FCA defended his application/letter and retorted that technicalities should be ignored and the order dated 9-4-2013 passed in S.T.A. No.328/IB/2012 may be recalled/rectified.

7. For the reasons and observations noted above, we hold that the subject application has not been filed by the registered person in accordance with the aforementioned provision of the law and the rules made there-under. Hence, the same is dismissed being "not

maintainable" and misconceived. However, if so desired, the applicant's company may file a fresh rectification application after complying with the statutory provisions and rules made there-under as mentioned above.

**MA(stay) S.T.A. No.141/IB/2013**

8. This second stay application dated 21st August 2013 has been filed against the same recovery notice dated 7-8-2013 as discussed above, with the following amended prayer:--

*"In view of the facts highlighted Supra it is humbly prayed that your Hounors may kindly grant stay against recovery proceeding initiated by the IR authorities for a period of six months or until such date when appeal as a result of miscellaneous application are decided by the Honourable ATIR. In the meantime, the tax authorities may please be directed to withdraw or halt the recovery proceeding initiated till disposal of appeal by the Hounorable ATIR". (emphasis supplied)*

Here again, contents of the aforesaid stay application were supported by an affidavit of Mr. Najam Javeed, Finance Director of applicant IESCO, who again concealed the fact of stay period of 120 days already granted by this Tribunal during the pendency of main appeal and further failed to disclose the fact of another stay application dated 19-8-2013 bearing No. 137/IB/2013 pending before this Tribunal. Further no Authority/Power of Attorney was given to KPMG Tasseer Hadi and Co. or any other AR to present the IESCO before this Tribunal.

9. Since we have dismissed the aforementioned rectification application for the reasons stated therein, therefore, this stay application has become infructuous and accordingly disposed of.

10. Office, is directed to send a copy of this order to the Registrar of the Tribunal and Assistant Registrar of its each Bench for strict compliance of Rules, 7, 11, 12, 13, 15, 17 and 18 of the Appellate Tribunal Inland Revenue Rules, 2010, with further direction that at the time of receiving of any application or appeal, examine documents in the light of the observation as given above.

11. Subject three Miscellaneous Applications are decided in the manner as indicated above.

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