IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 424 OF 2016

GE Capital Services India .. Petitioner

v/s.

Income Tax Appellate Tribunal & Ors. .. Respondents

Mr. J.D. Mistry, Sr. Counsel a/w Mr. Mrvnal Parekh, Adhiraj Malhotra i/b Duttmenon Dunmorr Sett for the petitioner
Mr. P.C. Chhotaray for the respondent

CORAM : M.S. SANKLECHA &
B.P. COLABAWALLA, J.J.

DATED : 17th FEBRUARY, 2016.

P.C.

1. This petition under Article 226 of the Constitution of India challenges the order dated 1st February, 2016 passed by the Income Tax Appellate Tribunal (Tribunal). The impugned order dated 1st February, 2016 dismissed the petitioner's application for intervention in pending appeals before the Tribunal being ITA No.3986/Mum/2013 and 4343/mum/2013 in the case of Indian Corporate Loan Securitization Trust 2008 series 14.

2. At the hearing, the parties agreed that the issue under challenge in the present petition viz. whether an Intervention application can be

entertained by a Regular Bench (not a Special Bench) of the Tribunal may not be adjudicated upon in this petition and be left open to be considered in an appropriate case. This for the reason that the parties are in broad agreement that the entire petition could be disposed of in the following terms :-

(i) *The respondent nos. 2 and 3 will serve on the petitioner copies of the orders passed by the Assessing Officer and the 1st appellate authority in the case of IRE Loan Trust for the Assessment Year 2007-08 and all unreported orders and other materials relied on therein within 7 (seven) days from today on its Advocates M/s. Dutt Menon Dunmorrsett, 121 Maker Chambers, IV Nariman Point, Mumbai-400 021.*

(ii) The petitioner shall be at liberty to require the respondent nos. 2 and 3 to serve upon them similar orders and materials in respect of other assessments if so advised within 30 days from today along with address on which the orders are to be served.

(iii) The petitioner shall file an appeal against any order served upon it under para (i) hereinabove, if it is so chooses within 14 days (fourteen) days of service upon it under para (i) hereinabove.

(iv) The petitioner shall be at liberty to file appeals against orders referred to in para (ii) hereinabove if so advised.

(v) *The 1st respondent shall forthwith hear the appeals filed in the case of IRE Loan Trust Nos. 5759/M/2014 and 5513/M/2014 along with the appeal if any filed by the* *petitioner as per para (iii) hereinabove.*

3. Taking into account the peculiar facts of this case, after hearing the parties, we give further following directions :-

(a) In the peculiar facts of the present case, particularly taking into account the following facts

(i) the petitioners were not heard before the order dated 30th June, 2014 was passed;

(ii) the order dated 30th June, 2014 of the Commissioner of Income Tax (Appeals) has not yet been officially communicated to the petitioner (although on being asked, on instructions, Mr. Mistry states they came to know of the order in August, 2014);

(iii) a copy of the order in the case of Indian Corporate Loan Securitization Trust 2008 series 14 passed by the Commissioner of Income Tax (Appeals) relied upon in the order dated 14th June, 2014 has not been furnished to the petitioner; (although on being asked, Mr. Mistry states on instructions that the petitioner got a copy of the same some time in November, 2015); and

(iv) Mr. Chhotaray, the learned Counsel very fairly in the interest of justice states that the Revenue does not desire to oppose the appeal on the ground of delay.

In the aforesaid facts, the delay, if any, on the part of the petitioner in filing its appeal to the Tribunal stands condoned. Thus, the Tribunal shall hear the petitioner's appeal on merits, if the appeal is filed in terms of para 2 (i) and (iii) hereinabove.

(b) The Tribunal would continue with the ongoing hearing of the appeals before it in the case of Indian Corporate Loan Securitization Trust 2008 series 14 being Income Tax Appeal No. 3986/Mum/2013 and 4343/Mum/2013. We are informed that there are other 245 appeals listed on the board of the Tribunal along with the aforesaid two appeals. It is open for the Tribunal to decide either the lead appeal which they have hearing presently or any of the other 245 appeals or all the 247 appeals as it deems fit. However, before passing the final order in any one of the appeals which are presently listed on the Tribunal's board, the petitioner's appeal if filed as provided in para 2(i) and (iii) hereinabove, would be heard along with the appeal of ARE loan Trust being Appeal No.5758/Mum/2014 and 5513/mum/2014 (already amongst the 247 matters listed on board). This is for the reason that the order dated 30th June, 2014 passed by the Commissioner of Income Tax (Appeals) adverse to the petitioner has placed reliance upon its decision in the case of Indian Corporate Loan Securitization Trust 2008 series 14. Thus, the basis of the decision in the pending appeal in Indian Corporate Loan Securitization

Trust 2008 series 14 is the same as passed in the case of the petitioner. Therefore, before the Tribunal takes a view on the Indian Corporate Loan Securitization Trust 2008 series 14 or any of the other 245 pending appeals (in case it gives rise to the same issue), it is necessary to hear the petitioner's submission otherwise it may be faced with fait accompli.

4. With the aforesaid directions, the petition stands disposed of.

5. Parties to act on copy of this order duly authenticated by the Associate of this Court.

(B.P. COLABAWALLA, J.) **(M.S. SANKLECHA, J.)**