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

\+ **W.P.(C) 1874/2017 & CM Nos.8334-35/2017**

M/S TELENOR (INDIA) COMMUNICATIONS PRIVATE LIMITED (EARLIER KNOWN AS M/S TELEWINGS COMMUNICATIONS SERVICES PRIVATE LIMITED

..... Petitioner

Through: Mr. Balbir Singh, Senior Advocate with Mr. Prakash Kumar, Ms. Rubal Maini, Ms. Rashmi Singh and Mr.Mehvish Khan, Advocates.

Versus

ASSISTANT COMMISSIONER OF INCOME TAX, & ORS.

..... Respondents

Through: Mr. Ruchir Bhatia and Mr. Puneet Rai, Advocates with Mr.Mandeep Panwar, Assessing Officer, Income Tax in person.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 01.03.2017

CM No.8335/2017 (for exemption)

1. Allowed, subject to all just exceptions.

2. The application stands disposed off.

W.P.(C) 1874/2017 & CM No.8334/2017 (for stay)

3. Issue notice. Mr. Ruchir Bhatia, Advocate accepts notice on behalf of the respondents.

4. With the consent of the parties, the appeal is taken up for final hearing. Mr.Mandeep Panwar, Assessing Officer of the Income-Tax is also present and has instructed his counsel.

5. The petitioner is aggrieved by the order of the Assessing Officer (AO) dated 22.02.2017 whereby it was given the benefit of stay of recovery of demands for Assessment Year (AY) 2014-15 (to the tune of ₹418,13,06,110/-) subject to its depositing ₹62,71,959,20/-. The petitioner's senior counsel Mr. Balbir Singh contends that having regard to the instructions of the Central Board of Direct Taxes embodied in its Office Memorandum (OM) dated 29.02.2016, petitioner is entitled to the facility of stay of demand in excess of 15% in the exceptions spelt out in para 4B(b), which reads as under:-

> *"(b) the assessing officer is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount lower than 15% is warranted (e.g. in a case when addition on the same issue has ken confirmed by appellate authorities in earlier years or the decision of the Supreme Court or jurisdictional High Court is in favour of the assesses, etc.) – the assessing officer shall refer the matter to the administrative Pr.CIT/CIT, who after considering all relevant facts shall decide the quantum/proportion of demand to be paid by the assessee as lump sum payment for granting a stay of the balance demand."*

6. It is submitted that the AO has not given due consideration to the top line credit adjustment which the petitioner has been reflecting in its books towards substantial services rendered till the end of any financial year but for which the contractual and legal liability to render services in respect of

the unutilised consideration subsists. It is argued that this is a substantial amount to the tune of about ₹220 crores. It is also urged besides that the license fee adjustment on account of the telecom policy in the wake of the Supreme Court's judgment in ***2G Spectrum's*** case, the amount set off i.e. ₹1600 crores out of the unutilised license fee for issuance of new Spectrum License in terms of the policy. The revenue's treatment of that amount as 'capital' is contested. It was lastly urged that the AO did not take into account the refund standing to the credit of the petitioner to the tune of about ₹27 crores.

7. Learned counsel for the revenue urged that this Court should be slow in interfering with the orders made under Section 220(6) of the Income Tax Act, 1961 (for short 'the Act') especially where the AO has exercised discretion appropriately in accordance with the extent of circulars and guidelines.

8. We have considered the submissions of the parties. The impugned order dated 22.02.2017, undoubtedly, has given effect to the OM, relied upon by the petitioner in the sense that the demand has been stayed subject to substantial relief of 85%. However, the circular – as noticed earlier and highlighted by the petitioner also carved out an expenditure in regard to certain "covered matters" or in regard to other contentious issues, the condition of 15% pre-deposit can be relaxed. The petitioner contentions in this regard are three fold. The impugned order does not disclose whether the AO had an occasion to consider or examine these issues. In these

circumstances, the Court is of the opinion that the AO should consider and make an order under Section 220(6) of the Act specifically dealing with the three arguments urged by the petitioner and reflected in this order. The AO shall pass appropriate orders in this regard, after giving such necessary opportunity to the petitioner as he deems expedient in the circumstances, with the approval of the competent officer i.e. the concerned Principal CIT/Commissioner of Income Tax (Appeals), within two weeks from today.

9. In the meanwhile, on instructions from the concerned Assessing Officer Mr.Mandeep Panwar, who is present in Court, the revenue would not take any coercive measures to enforce the outstanding demand till such order is made.

10. The writ petition along with pending application stands disposed off in the above terms.

11. A copy of this order be given *dasti* to the parties under the signatures of the Court Master.

S. RAVINDRA BHAT, J.

NAJMI WAZIRI, J.

MARCH 01, 2017
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