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

+ W.P.(C) 1407/2020

NOKIA CORPORATION

..... Petitioner

Through: Mr. Deepak Chopra, Advocate with
Mr. Abhimanyu Chopra, Mr. Ankul
Goyal, Advocates

versus

DEPUTY COMMISSIONER OF
INCOME TAX & ORS.

..... Respondents

Through: Mr. Deepak Anand, Sr. Standing
Counsel with Mr. Vipul Aggarwal,
Jr. Standing Counsel

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Date of Decision: 06th August, 2020

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

MANMOHAN, J: (Oral)

CM APPL. 13660/2020

1. The application has been heard by way of video conferencing.
2. Present application has been filed seeking a direction to the respondent to pass appeal effect orders and determine the consequential refunds for Assessment Years 1997-98 to 2007-08 expeditiously.
3. Learned counsel for the petitioner submits that in accordance with Section 153(5) of the Income Tax Act, the appeal effect orders have to be passed within three months from the end of the month in which the relevant

order is received by the Principal Chief Commissioner/Chief Commissioner of Income Tax. He states that in the present case, the orders deciding the issues in favour of the petitioner have been passed by the Income Tax Appellate Tribunal, Delhi on 05.06.2018 (AY 1997-98 & 1998-99); 29.03.2019 (AY 1999-00 to 2003-04) and 02.09.2019 (AY 2004-05 to 2007-08) and as per the record of the appeal filed by the respondent before this Court, the said orders were received by the Office of the second respondent on 19.07.2018 (AY 1997-98 & 1998-99); 08.05.2019 (1999-00 to 2003-04); 30.09.2019 (AY 2004-05 to 2007-08). Hence, the time limit prescribed under section 153(5) of the Act has lapsed.

4. Learned counsel for respondent relies upon the letter dated 04th August, 2020 written by the Deputy Commissioner of Income Tax to him. The said letter reads as under:-

“ F.No.DCIT/Intl. Tax/Cir-2(2)(2)/2020-21/ Dated: 04.08.2020

Sir,

Subject : Reply affidavit in early hearing application in WPC 1407 /2020" Nokia corporation v dcit

The undersigned has the following comments in the matter. It is hereby submitted :

- 1. That the Assessee M/s Nokia Corporation (formerly known as M/s Nokia Network OY) has filed Writ Petition No. 1407 of 2020 before the Hon'ble Delhi High Court seeking immediate release of refunds in regard to the AYs 1997-98 to 2007-08, arising on account of decision of the Hon'ble ITAT in favour of assessee.*
- 2. That in light of the order of the Ld. ITAT, the application of the assessee has been duly examined by the Respondent Department and the process of giving credit of pre-paid taxes to the assessee has already been initiated.*

3. *That as the matter at hand relates to AYs more than 20 years old and the fact that during such period the processing/computation of tax was done offline and not online, moreover, the fact that complete data relating to taxes paid by the assessee was not traceable, the claim of the assessee could not be completely verified.*
4. *That a letter dated 03.12.2019 has already been issued to the assessee vide email dated 04.12.2019 for providing copies of challans for the subject assessment years, keeping in mind the following considerations:*
 - a. *to avoid repeated rectifications;*
 - b. *to rule out the possibility of issuing undue refund to the assessee (just in case credit of such taxes has been allowed offline on an earlier occasion in the case of assessee in any AY);*
 - c. *to allow credit of complete amount as claimed by the assessee in one go; and*
 - d. *to expedite the matter.*

The assessee however opted not to provide the same. In the circumstances, this office could not complete the process.

5. *That it was intended that this matter regarding verification of taxes paid would be taken up immediately on completion of time barring matters, because at the relevant point of time, the available manpower was deployed for attending time barring matters.*
6. *That prima facie, the assessee is entitled to the refund however the same can be issued only after following the due process involving verification of payments, ensuring collection of all amounts due and ruling out the possibility of giving credit of taxes paid more than once. That without prejudice to the above, the assessee is entitled for interest on amounts refundable to it. However, this office does not propose to pay any interest for the period of delay which is attributable to the assessee itself.*
7. *That the assessee only submitted the scanned copies of certain documents through email on 30.04.2020. The documents submitted by it are required to be verified from the records and*

database maintained by the Department.

- 8. That since, during the present time of COVID-19, the number of COVID positive cases is increasing in the Respondent Department, therefore the Department is compelled to follow roster system for safety of its employees. Thus, the retrieval of old records is difficult because of non availability of requisite number of officials.*
- 9. That moreover, the Departmental Systems/ Database/ Records show only part credits/ payments, whereas, certain payments/ credits claimed by assessee are not available online. The non availability of the said old records and the current situation caused due to the pandemic is making it difficult for the Respondent to examine, verify and process the request of the assessee. As amounts claimed by the assessee have been transferred across different assessment years, the said claims do not match with the online data relating to credit of taxes available with the Department in respect of many claimed entries.*
- 10. That it is hereby stated that the efforts were earlier made by this office to verify the challans from the Bank authorities, however, the same is not yet confirmed/ verified.*
- 11. That in addition to the above, the issue involved in the present case is under litigation before this Hon'ble Court and before the Hon'ble Supreme Court of India. That since the Department is sanguine for a favourable decision, if the amount is refunded at this stage to the assessee and in case the decision is delivered in favour of the Department by the Hon'ble High Court of Delhi or by the Hon'ble Supreme Court, it will be difficult for the Department to recover the demand from the assessee as it has transferred its business operations to its subsidiary and has not been conducting much activities in India.*

*Yours faithfully,
Digitally signed by
SUKHAD CHATURVEDI
(Sukhad Chaturvedi)*

*Deputy Commissioner of Income-Tax
Circle 2(2)(2), International
Taxation, New Delhi”*

5. Today, Mr. Deepak Anand, learned Senior Standing counsel states that refund for the assessment year 2004-2005 has been processed yesterday. He also states that all the necessary documents have now been received from the petitioner.

6. Learned counsel for the applicant-petitioner also assures this Court that in case further documents are required, the same shall be furnished forthwith.

7. Mr. Deepak Anand assures this Court that refunds for the aforesaid remaining assessment years shall be processed shortly.

8. Keeping in view the aforesaid, the respondent is directed to pass appeal effect orders and determine the consequential refunds for the aforesaid assessment years along-with applicable statutory interest within three months from today in accordance with law.

9. With the aforesaid directions, the present writ petition and application stand disposed of.

10. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

SANJEEV NARULA, J

AUGUST 06, 2020

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