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VODAFONE IDEA LIMITED (Formerly known as Vodafone West Limited) vs. DEPUTY COMMISSIONER OF INCOME TAX

IN THE ITAT BOMBAY BENCH 'J'

SHAMIM YAHYA, AM & AMARJIT SINGH, JM.

SA Nos. 85/Mum/2021, 86/Mum/2021, 87/Mum/2021, 88/Mum/2021, 89/Mum/2021 (Arising out of ITA Nos. 671/Ahd/2015, 1071/Del/2015, 1021/Del/2015, 922/Del/2017, 1073/Del/2015)

Aug 9, 2021

(2021) 62 CCH 0419 MumTrib

Legislation Referred to

Section 254(2)

Case pertains to

Asst. Year 2010-11 & 2012-13

Decision in favour of:

Assessee

Assessment —Extension of s tay —A ssessee seeks extension of stay granted by ITAT against outstanding demand of tax and interest in marginally noted assessment years arising out of appeals mentioned herein above — Held, ITAT had extended stay in case earlier — Now, it is a submission of Counsel of assessee that hearing of this appeal could not take place in interim period due to no fault of assessee — Departmental Representative could not disputed proposition that hearing of appeal after last stay could not take place because of no fault of assessee — Stay is extended for a period of six months from date of this order or till disposal of appeal whichever is earlier — Assessee's applications allowed.

Held

ITAT had extended the stay in the case earlier. Now, it is a submission of Counsel of the assessee that hearing of this appeal could not take place in the interim period due to no fault of the assessee.

(para 3)

Departmental Representative could not disputed the proposition that hearing of the appeal after the last stay could not take place because of no fault of the assessee. Stay is extended for a period of six months from the date of this order or till the disposal of the appeal whichever is earlier. Assessee's applications allowed.

(para 4)

Conclusion

As hearing of this appeal could not take place in the interim period due to no fault of the assessee stay is granted.

In favour of

Assessee

Counsel appeared:

Percy Pardiwala for the Appellant.: Manpreet Singh Duggal for the Respondent

SHAMIM YAHYA, AM.

1. By way of these stay applications, the assessee seeks extension of stay granted by ITAT against outstanding demand of tax and interest in the marginally noted assessment years arising out of the appeals mentioned herein above.

2. We have heard both the counsels and perused the records. We find that ITAT had extended the stay in the case earlier vide order dated 01/02/21 by observing as under:-

> 4. We heard the rival contentions and perused the material on record. We find the assessee has complied with the directions of the Hon'ble Tribunal on deposit of Income Tax instalments .Considering the sequence of events and the facts as disclosed in the earlier stay petitions Nos. 884/Del/2019 in ITA No. 671/AHD/2014 A.Y 2010-2011 and S.A No. 885/Del/2014 in ITA No. 922/AHD/2017 A.Y2012- 2013,ITAT Delhi bench has extended the stay by the order dated 13.09.2019 for a period of six months or till disposal of appeal whichever is earlier. Further, the assessee has filed the stay petition for extension of the stay were the Hon'ble Delhi Bench in SA No. 9, 10 &10/Del/2019 in ITA Nos. 1021, 1071 & 1073/Del/2015 for A.Y 2010-11 has observed that the assessee sought extension of stay earlier granted from time to time and also the record shows that delay in non disposal of appeals is not attributable to the Assessee. Therefore, the Hon'ble Tribunal has granted further extension of stay of outstanding demand for a period of six months or till disposal of the appeals whichever is earlier. We find, subsequent to orders of Hon'ble Tribunal in extension of stay, the cases were listed and also the interim orders were passed. In the present stay petitions, the assessee seeking extension of stay which was granted earlier and the interim orders passed. The Ld.AR emphasized that the delay in non disposal of appeal is not attributed to the assessee and referred to the explanations filed along with the Stay petitions . We find the Hon'ble Delhi High Court in Pepsi Foods (P) ltd Vs ACIT has observed that when the delay is not attributed to the assessee, the Tribunal has power to extend the stay even beyond the time limit laid down in 3rd proviso to Sec 254(2)A of the Act.

We consider appropriate to extract below the observations of Hon'ble Delhi High Court in Pepsi Foods (P) Ltd. Vs. ACIT (57 Taxmann.com 337) : "

> 24. Furthermore, the petitioners are correct in their submission that unequals have been treated equally. Assessees who, after having obtained stay orders and by their conduct delay the appeal proceedings, have been treated in the same manner in which assessees, who have not, in any way, delayed the proceedings in the appeal. The two classes of assessees are distinct and cannot be clubbed together. This clubbing together has led to hostile discrimination against the assessees to whom the delay is not attributable. It is for this reason that we find that the insertion of the expression - 'even if the delay in disposing of the appeal is not attributable to the assessee'- by virtue of the Finance Act, 2008, violates the non- discrimination clause of Article 14 of the Constitution of India. The object that appeals should be heard expeditiously and that assesses should not misuse the stay orders granted in their favour by adopting delaying tactics is not at all achieved by the provision as it stands. On the contrary, the clubbing together of 'well behaved' assesses and those who cause delay in the appeal proceedings is itself violative of Article 14 of the Constitution and has no nexus or connection with the object sought to be achieved. The said expression introduced by the Finance Act, 2008 is, therefore, struck down as being violative of Article 14 of the Constitution of India. This would revert us to the position of law as interpreted by the Bombay High Court in Narang Overseas (supra), with which we are in full agreement. Consequently, we hold that, where the delay in disposing of the appeal is not attributable to the assessee, the Tribunal has the power to grant extension of stay beyond 365 days in deserving cases. The writ petitions are allowed as above."

5. We considering the facts, circumstances and stay petitions hold that the delay in non disposal of the appeal is not attributable to the assessee. Hence, the balance of convenience lies in the favour of the assessee for extension of stay as the assessee complied with the directions of the Hon'ble Tribunal. Accordingly, we extend the stay of outstanding demand for further period of six months from the date of this order or till disposal of the appeal whichever is earlier.

6. In the result, all the stay petitions filed by the assessee are allowed.

3. Now, it is a submission of Ld. Counsel of the assessee that hearing of this appeal could not take place in the interim period due to no fault of the assessee.

4. Learned Departmental Representative could not disputed the proposition that hearing of the appeal after the last stay could not take place because of no fault of the assessee. Accordingly, we extend the stay for a period of six months from the date of this order or till the disposal of the appeal whichever is earlier.

5. In the result, these applications stand allowed.

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Customized Notes
