

आयकर अपीलीय अधिकरण "K" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "K" BENCH, MUMBAI

**BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 971/Mum/2016

(निर्धारण वर्ष / Assessment Year : 2011-12)

MSM Discovery Private Limited, Interface Building No. 7, 4 th floor, Maland Link Road, Malad (West), Mumbai - 400 064.	बनाम/ v.	The Asst. Commissioner of Income Tax - Central Cir. 12(3)(2), Room No. 147B, 1st floor, Aayakar Bhavan, M.K. Road, Churchgate, Mumbai -400 020.
स्थायी लेखा सं./PAN : AAGCS4253E		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by :	Shri Hiten Chande,CA
Revenue by :	Mrs. Malathi Sridharan, CIT-DR

सुनवाई की तारीख / **Date of Hearing** : 23-02-2017

घोषणा की तारीख / **Date of Pronouncement** : 23-02-2017

ORDER VACATING STAY OF DEMAND

PER BENCH

This appeal, filed by the assessee, being ITA No. 971/Mum/2016 for assessment year 2011-12 has come up for hearing today i.e. 23-02.2017 whereby ld. Counsel Shri Hiten Chande,CA on behalf of the assessee and Mrs. Malathi Sridharan, CIT DR on behalf of the Revenue were present. The Assessing officer was also present during the course of hearing. When the appeal was called for hearing, the ld. Counsel for the assessee Shri Hiten Chande,CA filed an application dated 23rd February 2017 for admission of additional grounds and sought adjournment for today's hearing. This is a

stay granted matter whereby stay of outstanding demand of more than Rs. 150 crores outstanding against the assessee was originally granted by the Income-Tax Appellate Tribunal, K Bench, Mumbai (hereinafter called “the tribunal”) on terms and conditions as stipulated in the stay of demand order vide SA No. 106/Mum/2016 (arising out of appeal no. ITA No. 971/Mum/2016) vide order dated 18-03-2016 for a period of six months from the date of the order or till the passing of the order in appeal , whichever is earlier. While granting stay of outstanding demand, the tribunal has, inter-alia, imposed a condition that the assessee shall not seek any adjournment except on genuine and bonafide reasons. There is an outstanding demand of more than Rs. 150.00 crores still outstanding to payable against the assessee for assessment year 2011-12. The said stay of outstanding demand was further extended by the tribunal vide order dated 16th September, 2016 for a further period of six month on same terms and conditions vide SA No. 325/Mum/2016 arising out of ITA No. 971/Mum/2016 for assessment year 2011-12. During the course of hearing before us , the ld. Counsel for the assessee Shri Hiten Chande,CA filed additional grounds vide letter dated 23-02-2017 which are in relation to some arithmetical inaccuracies in the workings provided in the DRP order which were already covered by ground No. 1 and ground 12 to 14 filed before the Tribunal with the appeal memo. The ld. Counsel for the assessee contended that it is opined by learned counsel for the assessee that in their opinion specific grounds be raised on this issue of arithmetical inaccuracies in DRP order and hence the same are being filed as additional grounds of appeal vide letter dated 23-02-2017. The ld. Representative of the Revenue Mrs. Malathi Sridharam, CIT-DR had taken strong objection to the same and vehemently submitted that the Revenue is ready to argue the appeal today despite the fact that these additional grounds are filed by the assessee today which merely relates to the arithmetical inaccuracy in the DRP order, which does not have any significant bearing on outcome of the matter to be decided and more so these additional grounds are

already covered by ground no 1 and ground no 12 to 12 which were filed by the assessee with appeal memo as admitted by the assessee in its letter dated 23-02-2017. The ld. CIT-D.R. argued that there is very high amount of outstanding demand which is more than 150 crores outstanding against the assessee and stay of demand should be vacated by the tribunal in case the assessee seeks adjournment for today's hearing as it is a direct violation of conditions of stay of demand granted by the tribunal vide their afore-stated orders dated 18-03-2016 and 16-09-2016. The ld. CIT-D.R. further submitted that it is the observation of the Revenue that various assessee's through their counsels are seeking adjournments before the tribunal on various occasions on frivolous grounds just to delay the disposal of the appeals which has become a routine matter for these assessee's and their counsel's causing loss of time and resources of the nation and requested that such practices need to be discouraged at the outset in national interest. It was also brought by us to the notice of the ld. Counsel for the assessee that Bench as well the Revenue is ready for going ahead for hearing today of the instant appeal in ITA no. 971/Mum/2016 and since it is a stay of demand granted matter, the stay shall be vacated if the assessee still insist on adjournment and the matter is not argued today. However, the ld. Counsel for the assessee still insisted that the appeal may be adjourned today.

2. We have heard the contentions of both the parties and perused the material available on record. We have observed that in this case, there is a very high demand i.e. more than 150 crores which is still outstanding to be payable by the assessee and the stay of demand was granted by the tribunal on the condition that the assessee will not seek adjournment except on genuine and bonafide reasons. The assessee has now come up with the additional grounds in relation to arithmetical inaccuracy in the workings provided in the DRP order which grounds are already covered by ground No. 1 and ground 12 to 14 which were already filed before the tribunal in the

appeal memo as also admitted by the assessee and the assessee has requested for admission of the these additional grounds vide letter dated 23-02-2017. The assessee counsel has insisted on granting adjournment for today's hearing despite knowingly well that this a direct flouting of the terms of stay of demand originally granted by the tribunal. This was brought to the notice of learned counsel for the assessee but he still insisted on grant of adjournment for today's hearing. The ld. CIT-D.R. categorically brought to our notice that these additional grounds can be argued today itself as they are covered by the existing grounds and does not have any significant bearing on the outcome of the appeal as they are only referring to some arithmetical inaccuracy in the order of the DRP. However, the ld. Counsel for the assessee insisted for the adjournment despite being brought to his notice about consequences of seeking adjournment. Thus, keeping in view factual matrix as discussed above, we hereby adjourn the hearing of the instant appeal in ITA No. 971/Mum/2016 for assessment year 2011-12 and fix the next date of hearing on **28-06-2017** which was announced in the open court in the presence of both the parties and at the same time we hereby vacate the stay of demand granted by the tribunal in SA No. 106/Mum/2016 vide order dated 18-03-2016 which stay of demand was further extended by the tribunal in SA No. 325/Mum/2016 arising out of ITA No. 971/Mum/2016 for assessment year 2011-12 vide orders dated 16.09.2016. Thus, in nutshell the stay of outstanding demand against the assessee as existing as of date stood vacated forthwith immediately on pronouncement of the order by the tribunal in open court today i.e. 23-02-2017 in the presence of both the parties . The Assessing Officer was also present in the court. The order is pronounced in the open court in the presence of learned counsel for the assessee, learned CIT-DR and the Assessing Officer. The Revenue is now free to recover the outstanding demand against the assessee in accordance with law. We order accordingly.

3. In the result, stay of outstanding demand as granted by tribunal in SA no 106/Mum/2016 which was further extended in SA no 325/Mum/2016 each for six month respectively , arising out of appeal filed by the assessee in ITA No. 971/Mum/2016 for assessment year 2011-12 stood vacated with immediate effect on pronouncement of this order in open court today in above mentioned manner.

Order pronounced in the open court on 23rd February, 2017.

आदेश की घोषणा खुले न्यायालय में दिनांक: 23-02-2017 को की गई ।

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated

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व.नि.स./ R.K., Ex. Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai "K" Bench
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai