

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

BEFORE SHRI M. BALAGANESH, AM & SHRI PAVAN KUMAR GADALE, JM

SA Nos. 164 to 166/Mum/2020
(Assessment Years 2009-10 to 2011-12)

SA No. 158/Mum/2020
(Assessment Year 2013-14)

Vodafone Idea Ltd. (Earlier known as Vodafone India Limited which now stands merged in Vodafone Idea Ltd.), 10 th Floor, Birla Centurion, Century Mills Compound, Pandurang Budhkar Marg, Worli, Mumbai-400030 (Appellant)	Vs.	DCIT, Circle-8(3)(2), Mumbai. (Respondent)
PAN No. AAACH5332B		

Appellant by	:	Shri Nitesh Joshi with Sh. Ketan Ved, AR
Respondent by	:	Shri S.S. Iyengar, DR

Date of hearing:	31.03.2021
Date of pronouncement:	16.04.2021

ORDER

PER M. BALAGANESH, AM:

By virtue of these Stay Petitions (SA), the assessee seeks to keep the demands raised for the respective Assessment Years (AYs) in abeyance till the disposal of the appeals by this Tribunal.

2. Let us take up the stay petition in SA No. 164/Mum/2020 for AY 2009-10. We find that this SA filed by the assessee is for seeking extension of stay already granted by this Tribunal vide its order dated 07.10.2019 wherein this Tribunal had extended the stay for a period of 180 days from 07.10.2019 or till the disposal of the appeal by this Tribunal, whichever is earlier. Thereafter, the

stay was extended from time to time by this Tribunal pursuant to the blanket stay order passed by Hon'ble Bombay High Court upto January 2021.

3. We find from the chronology of events given vide page nos. 13 to 17 of the stay application preferred by the assessee, that the delay in non-disposal of the appeal was not due to the reason attributable to the assessee as appeals were adjourned from time to time either at the behest of the bench or at the request made by Id. Departmental Representative (DR). Moreover, we also find that the assessee has also paid 20% of the demands raised thereon in the instant case.

4. In view of these facts, we are inclined to extend the stay for a further period of 180 days from today or till the disposal of the appeal, whichever is earlier.

5. The assessee is directed not to take any adjournment on the scheduled date of hearing except due to unavoidable or exceptional circumstances and cooperate in expeditious disposal of the appeal.

6. Let us take up the stay petition in SA No. 165/Mum/2020 for AY 2010-11. We find that this SA filed by the assessee is for seeking extension of stay already granted by this Tribunal vide its order dated 07.10.2019 wherein this Tribunal had extended the stay for a period of 180 days from 07.10.2019 or till the disposal of the appeal by this Tribunal, whichever is earlier. Thereafter, the stay already granted was extended from time to time by this Tribunal pursuant to the blanket stay order passed by Hon'ble Bombay High Court upto January 2021. Similarly, from the chronology of events given vide page nos. 12 to 15 of the stay application preferred by the assessee, we find that the delay in non-disposal of

the appeal was not due to the reason attributable to the assessee as appeals were adjourned from time to time either at the behest of the bench or at the request made by Id. Departmental Representative (DR).

7. We find that total taxes paid by the assessee for this year is less than 20% of the total demand raised thereon and hence the applicability of mandate of section 254(2A) comes into operation. We find that the Id. Authorized Representative (AR) made various propositions to drive home the point that amended proviso to section 254(2A) of the Act could be made applicable only for stay application filed for the first time after 01.04.2020 and the same cannot be made applicable for extension of stay. For the sake of convenience, the provisions of section 254(2A) duly amended or reproduced here-in-below:

(2A) In every appeal, the Appellate Tribunal, where it is possible, may hear and | decide such appeal within a period of four years from the end of the financial year in which such appeal is filed under sub-section (1) [or sub-section (2)]² of section 253 :

Provided that the Appellate Tribunal may, after considering the merits of the application made by the assessee, pass an order of stay in any proceedings relating to an appeal filed under sub-section (1) of section 253, for a period not exceeding one hundred and eighty days from the date of such order² subject to the condition that the assessee deposits not less than twenty per cent of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnishes security of equal amount in respect thereof| and the Appellate Tribunal shall dispose of the appeal within the said period of stay specified in that order:

Provided further that no extension of stay shall be granted by the Appellate Tribunal, where such appeal is not so disposed of within the said period of stay as specified in the order of stay, unless the assessee makes an application and has complied with the condition referred to in the first proviso and the Appellate Tribunal is satisfied that the delay in disposing of the appeal is not attributable to the assessee, so however, that the aggregate of the period of stay originally allowed and the period of

stay so extended shall not exceed three hundred and sixty-five days and the Appellate Tribunal shall dispose of the appeal within the period or periods of stay so extended or allowed:]

Provided also that if such appeal is not so disposed of within the period allowed under the first proviso or the period or periods extended or allowed under the second proviso, which shall not, in any case, exceed three hundred and sixty-five days, the order of stay shall stand vacated after the expiry of such period or periods, even if the delay in disposing of the appeal is not attributable to the assessee.

8. We find that the Id. DR had filed written submissions which were sent in email on 01.04.2021 wherein he had vehemently argued that the law mandates payment of 20% of the total demand as a pre-condition for granting stay of demand by the Tribunal after the amendment. This mandatory condition cannot be tinkered by the Tribunal in any circumstances. We find that this issue had already been considered by the co-ordinate bench of this Tribunal in the case of Bennett Coleman & Company Ltd. vs. DCIT in SA No. 182/Mum/2020, SA No. 33/Mum/2021, SA Nos. 34 & 35/Mum/2021 dated 19.03.2021, wherein it was observed as under:

“6. Considered the rival submissions and material placed on record. We notice that the lead case is pending from 2014 and Coordinate Bench has granted the stay on condition and after going through the argument of both the counsels, we are of the view that assessee has no fault for the delay in disposing of the pending appeals. Therefore, we are of the view that assessee deserves to be granted extension of stay for a period of 4 months and accordingly, we grant the same.”

9. We find that this Tribunal had also placed reliance on the coordinate bench decision of Hyderabad Tribunal in SA No. 81/Hyd/2020 dated 27.05.2020 in the case of Quislex Legal Services Pvt. Ltd. vs. ACIT. Respectfully following the aforesaid decision of this Tribunal, we find that the assessee is entitled for stay of demand even though it exceeds the period beyond the 365 days and we have

already stated that the delay in non-disposal of the appeal is not attributable to the assessee. Reliance in this regard is placed on the decision of Hon'ble Delhi High Court in the case of Pepsi Foods Pvt. Ltd. vs. ACIT reported in 376 ITR 87 (Delhi) and also on the recent decision of Hon'ble Supreme Court in the case reported in TS-236-SC-2021, wherein the Hon'ble Supreme Court held that the 3rd proviso to section 254(2A) of the Act that provides for automatic vacation of stay beyond 365 days even if the assessee was not responsible for delay in hearing of the appeal, is arbitrary and discriminatory and hence struck down as violation of Article-14 of the Constitution of India.

10. We find that the Hon'ble Supreme Court read down the 3rd proviso to section 254(2A) as follows:

“Common order of stay shall stand vacated after the expiry of the period.....only if the delay in disposing of the appeal is attributable to the assessee”

11. We also find that the Id. DR in its written submission had submitted that stay proceedings are procedural in nature and that the mandatory condition prescribed in the Statute of payment of 20% of the demands should be followed without diluting the same. We find that all these points have already been considered by this co-ordinate bench of this Tribunal referred to (supra) and respectfully following the said decision and also the recent decision of Hon'ble Supreme Court preferred (supra), we are inclined to grant extension of stay in the instant case for a further period of 180 days or till the disposal of the appeal for

this AY, whichever is earlier. The assessee is directed not to take any adjournment on the scheduled date of hearing except due to unavoidable or exceptional circumstances and co-operate in expeditious disposal of the appeal.

12. Let us now take up the stay petition in SA No.166/Mum/2020 for AY 2011-12. We find that this SA filed by the assessee is for seeking extension of stay already granted by this Tribunal vide its order dated 27.09.2019 wherein this Tribunal had extended the stay for a period of 180 days or till the disposal of the appeal by this Tribunal, whichever is earlier.

13. We find that the facts for AY 2011-12 as far as the stay application is concerned are exactly similar to that prevailing in AY 2010-11 stay application. For this AY also i.e. for AY 2011-12, the assessee has paid less than 20% of the total demands.

14. We find that one of the major additions made by Id. Assessing Officer (AO) for this AY is with regard to disallowance made under section 14A of the Act to the tune of Rs. 357.23 crores. We find that assessee had pleaded that no exempt income has been earned by it during the year and accordingly by placing reliance on various decisions of various High Courts, it had pleaded that no disallowance under section 14A of the Act could be made.

15. We find that the assessee had indeed made a prima facie case in this regard and once this disallowance under section 14A of the Act is ignored, the net result of other remaining additions would still only result in assessed loss and hence there is no requirement of payment of any taxes for this AY. On this reason

itself, assessee is entitled for extension of stay. Even otherwise as already stated earlier, the facts for this AY are similar to facts before the stay application for AY 2010-11 and accordingly the decision rendered thereon by us hereinabove shall apply *mutatis mutandis* for this AY also. Accordingly, we are inclined to grant extension of stay for a period of 180 days or till the disposal of the appeal for this AY by this Tribunal, whichever is earlier. The assessee is directed not to take any adjournment on the scheduled date of hearing except due to unavoidable or exceptional circumstances and co-operate in expeditious disposal of the appeal.

16. Let us now take up the stay application in SA No.158/Mum/2020 for AY 2013-14. We find that this SA is filed by the assessee for seeking extension of stay already granted by this Tribunal vide its order dated 27.12.2019 after duly considering the fact, the co-ordinate bench decision of this Tribunal in the case of Idea Cellular Ltd. v/s. CIT in ITA No. 360/Mum/2016 for AY 2011-12 wherein it was held that the issue of Depreciation on 3G Spectrum Fees has been decided in favour of the assessee.

17. We find that in the instant case, the AO had made disallowance on depreciation on 3G Spectrum Fees to the tune of Rs. 408.01 crores. And if the said disallowance is ignored, the net result of remaining additions would only result in assessed loss and hence no tax is per se payable for this AY. We find that assessee had made a prima facie case in its favour and accordingly we inclined to grant extension of stay for a further period of 180 days from today or till the disposal of the appeal by this Tribunal for this AY, whichever is earlier. The assessee is directed not to take any adjournment on the scheduled date of

hearing except due to unavoidable or exceptional circumstances and co-operate in expeditious disposal of the appeal.

18. ***In the result, all the stay applications of the assessee are allowed.***

Order pronounced in the open court on 16.04.2021

Sd/-
(PAWAN KUMAR GADALE)
(JUDICIAL MEMBER)

Mumbai, Dated: 16.04.2021
SK.PS

Sd/-
M. BALAGANESH
(ACCOUNTANT MEMBER)

Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त (अपील)/ The CIT(A)
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधिआयकर ,अपीलीयअधिकरणमुंबई ,/
DR, ITAT, Mumbai
6. गार्डफाईल /Guard file.

BY ORDER,

(Asstt.Registrar)
ITAT, Mumbai