

IN THE INCOME TAX APPELLATE TRIBUNAL “T” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI PAVAN KUMAR GADALE, JM

S.A. No. 76/Mum/2021
(Arising out of ITA No. 216/Chd/2011)
(Assessment Year: 2006-07)

Vodafone Idea Limited (Earlier known as Vodafone India Limited which is now stands merged in Vodafone Idea Limited) 10 th Floor, Birla Centurion Century Mills Compound Pandurang Budhkar Marg, Worli, Mumbai-400 030	Vs.	Addl.CIT, Range-1 Chandigarh
PAN/GIR No. AAACH5332B		
(Appellant)	:	(Respondent)
Appellant by	:	Shri Salil Kapoor
Respondent by	:	Shri Sanjay J. Sethi
Date of Hearing	:	09.07.2021
Date of Pronouncement	:	12.07.2021

ORDER

Per Shamim Yahya, A. M.:

By way of this Stay Application, the assessee seeks extension of a stay against outstanding demand for AY 2006-07.

2. We have heard both the counsel and perused the records. We note that vide order dated 08/03/2021, this ITAT has extended the stay for a period of four months or till the disposal of appeal, whichever is earlier. We find that it will be gainful to refer to the stay order passed by this ITAT on 08/03/2021 in this regard.

By way of this Stay Application assessee seeks extension of stay of outstanding demand and interest of Rs. 2,67,26,54,239/- for A.Y. 2006-07.

2. We have heard both the parties and perused the records. It transpires that there has been several extension of stay in this case due to the fact that the income tax appeal could not be heard by the ITAT. In the last order of the stay application dated 5.2.2021 the ITAT had passed an interim order noting as under :-

“When this Stay Application came up for hearing Ld. Counsel for the assessee submitted that 40% of the tax demand out of Rs. 297 Crores was secured as the assessee has paid Rs. 30 Crores and has provided security to the department. It is also stated that bank guaranties were provided to the extent of Rs. 207 Crores. It is stated that appeal was adjourned from time to time either by the Bench or on the request of the Ld.DR and delay is not attributable to the assessee in the appeal getting adjourned from time to time. It is also submitted that Hon'ble Bombay High Court in WP. No. 3606 of 2019 dated 24.01.2020 removed the condition of providing bank guarantees for the A.Y. 2007-08. Counsel requested before us to pass similar order even for this Assessment Year i.e. 2005-06 which is in appeal as the bankers are not extending bank guaranties.

Ld. DR responding to the submissions of Ld.AR requested time for obtaining report from the Assessing Officer. Accepting the request of the Ld. DR this Stay Application is adjourned to 19.02.2021. The Assessing Officer shall not take any coercive steps for recovery of outstanding demand till 19.02.2021 and it was informed to the Ld.DR to communicate the same to the Assessing Officer. The Stay Application is adjourned to 19.02.2021.”

3. Referring to the above interim order of the ITAT learned Counsel of the assessee claimed that after initial stay granted by the ITAT the assessee had complied with all the requirements. However, he submitted that as per the requirement of the ITAT the assessee had secured 40% of the tax demand out of Rs. 2.96 crores by payment of Rs. 30 crores and had provided security for the balance. He submitted that in the meanwhile the appeal could not be heard by the ITAT as the Department had sought repeated adjournments or the appeal was adjourned by the Bench. Learned Counsel of the assessee submitted that due to the financial constraint the bank had declined to provide further guarantee and the guarantee granted expired on 14.2.2020. In this regard learned counsel referred to the order of Hon'ble Jurisdictional High Court in assessee's own case dated 24.1.2020 with respect to stay application No. 23/Chd/2011 for A.Y. 2007-08. In the stay granted by the ITAT in that case also there was a stipulation to provide bank guarantee to cover the remaining 30% of the tax amount. The assessee submitted to the Hon'ble High Court that for various reasons bank insisted full deposits of the aforesaid amount to provide bank guarantee and it has created piquant situation for the assessee as it was going through difficult situation faced at

the moment. In these circumstances Hon'ble High Court had directed that the appeal should be heard by the ITAT expeditiously within a period of four months from the date of order. Till the hearing of the appeal as above it was stipulated that the demand in question could be kept in abeyance without any requirement to furnish bank guarantee. Learned counsel submitted that for various reasons due to adjournment being sought by the Department, the said appeal also has not been heard by the ITAT. In these circumstances in the backdrop of the aforesaid Hon'ble High Court order, learned counsel pleaded that assessee's inability to furnish bank guarantee should be accepted and the condition to provide bank guarantee should be revoked. Learned counsel further pleaded that the assessee has also kept in lien with the bank fixed deposits of Rs. 60 crores and with accumulation of interest, the value of fixed deposits now is Rs. 96 crores. He submitted that as the assessee has financial difficulties interest accumulation of Rs. 36 crores in the above said fixed deposits may kindly be directed to be released. Further learned counsel submitted that the hearing of this appeal for A.Y. 2006-07 will also be having relationship with other appeals which are pending before the ITAT and are fixed for hearing on 31.3.2021. Learned counsel pleaded that the stay should be extended for at least for a further period of four months.

4. Learned Departmental Representative in this regard stated that in terms of last interim stay order, report is still awaited from the Assessing Officer. Learned Departmental Representative submitted that he has not received any report from the Assessing Officer in this regard. However, he opposed the request of the assessee to remove condition of bank guarantee and release of interest accumulation of Rs. 36 crores in fixed deposits lying with the bank.

5. Upon careful consideration, we note that the ITAT has already granted stay in this case initially on 7.4.2011 and has extended the same on various dates in the past. The assessee has complied with all the conditions of the stay and the appeal was not heard for the reasons not attributable to the assessee. Now while seeking stay the assessee has submitted that due to financial problems banks are not extending bank guarantee which was a condition stipulated in the original stay order by the ITAT. We note that Hon'ble Bombay High Court in order dated 24.1.2020 referred above had held as under :-

3. It is seen that for the assessment year 2007-08, petitioner has preferred appeal before the Income Tax Appellate Tribunal, Mumbai Bench "D", Mumbai (Tribunal) which has been registered as ITA NO.1173/CHD/2011.

4. In the said appeal petitioner had filed an application for staying the demand of Rs.93,03,55,486.00. The said application was registered as SA No.23/Chd/2011. It may be mentioned that as per the assessment order total income of the petitioner was assessed at Rs.7,43,66,88,318.00 and the tax demand was Rs.3,45,43,83,033.00. It appears that petitioner had paid an amount of Rs.2,17,08,29,467.00 excluding interest amount which amounts

to 70% of the total tax amount. By order dated 14th December, 2011 Tribunal stayed recovery of the balance amount. However, at a subsequent stage, Tribunal insisted that petitioner should provide bank guarantee to cover the remaining 30% of the tax amount. This was in order dated 23rd November, 2012 passed in SA N0.334/M/2012.

5. Learned counsel for the petitioner submits that for various reasons the banks of the petitioner are now insisting on full deposit of the aforesaid amount in order to provide bank guarantee. This has created a piquant situation for the petitioner as it is going through a difficult financial phase at the moment.

6. Learned standing counsel Revenue submits that appeal of the petitioner is of the year 2011 and in fact was fixed for hearing on several occasions. *As a matter of fact it was heard but for one reason or the other hearing could not be concluded.*

7. After hearing learned counsel for the parties and on due consideration, we are of the view that it would be in the interest of justice if the appeal itself is heard by the Tribunal expeditiously and till such time recovery of the balance tax amount should be stayed.

8. Accordingly, Tribunal is directed to hear and decide Income Tax Appeal No. 1173/CHD/2011 for the assessment year 2007-08 within a period of four months from today. Till the hearing of the appeal as above, the demand in question shall be kept in abeyance without any requirement of furnishing bank account.”

6. We note that in analogical situation Hon'ble High Court in assessee's own case for another year has directed to keep the said condition of bank guarantee in abeyance till the hearing by the ITAT in that case. Hence we deem it appropriate to keep the requirement for the bank guarantee in terms of earlier order of the ITAT in abeyance till the hearing of the appeal by the ITAT in accordance with the ratio from the aforesaid Hon'ble High Court decision.

7. We are not in agreement with the assessee's request that accumulation of interest of Rs. 36 cores in the fixed deposit should be directed to be released to the assessee. Hence we decline to give any such direction.

8. In terms of the above we extend the stay for a period of four months or till the disposal of the appeal whichever is earlier.

3. It is further noted that assessee's plea in this stay application are as under:-

The learned AO had adjusted a refund of INR 2,77,96,750 determined for AY 2005-06 on September 15, 2017 against outstanding demand for the subject AY despite of the stay order passed by this Hon'ble Tribunal being in effect. The Applicant had challenged such adjustment in Writ Petition No. 2678/2017 which was disposed by the Hon'ble Bombay High Court vide order dated April 10, 2018 whereby the action of the learned AO in adjusting the refunds was set aside with a direction to the Additional Commissioner of Income Tax, Range 8 ('Addl. CIT') to consider the objections filed by the Applicant afresh. Pursuant to this, the learned Addl. CIT dismissed the objections in a perfunctory and perverse manner. The Applicant has filed a grievance petition against such order before the Chief Commissioner of Income Tax 3, which is currently pending. Hence, it is requested that stay extension be granted on the outstanding balance of INR 2,67,26,54,239.

Security in form of bank guarantee amounting to INR 2,07,26,54,239 and lien on fixed deposit of INR 60,00,00,000 in favour of the Tax Department has already been furnished for the entire outstanding demand. Hence, 100 percent of disputed outstanding tax demand is secured. However, the Tribunal vide its Order dated 08 March 2021 has directed to keep the requirement of furnishing security in the form of bank guarantee of INR 2,07,26,54,239 in abeyance till the disposal of the appeal by the Tribunal in accordance with the Order dated 24 January 2020 passed by the Bombay High Court in Applicant's own case for A.Y. 2007-08. Copy of the lien on fixed deposit and the Order dated 08 March 2021 are attached as **Annexure 5**(pages 55 to 68 of the compilation).

4. We further note that after the grant of last stay, this appeal could not be heard due to no fault of assessee. It is the revenue, which has sought adjournment. Furthermore, we note that these appeals were combined with another appeals of the same assessee, wherein the issues related to disallowance u/s. 80 IA which has a affect on subsequent years. Hence, these were consolidated to be heard together. When the matter was called for hearing, the revenue has sought adjournment on the plea that Shri Girish Dhare, a special counsel has been appointed for hearing in these cases. That Shri Girish Dhare is not well and on this plea revenue has sought adjournment time and again. It may be gainful to refer to the ITAT order sheet entry dated 20.05.2021 as under:-

Hearing is adjourned to 21.6.2021. Both the parties were informed.

Learned CIT DR Shri Sanjay Singh informed that revenue has appointed Shri Girish Dave to argue on behalf of the revenue. That Shri Dave is suffering from Covid and is at present admitted in ICU. Hence he sought an adjournment. It was pointed out that in the present case there is an honourable jurisdictional High Court decision to dispose of the matter in a time frame which has already expired and learned CIT-DR was requested to intimate a particular date when the matter can be taken up. The learned CIT-DR showed his inability to give any definite timeframe. It was further asked if there is any standby arrangement on behalf of the revenue to go ahead with the hearing i.e. can anybody else represent revenue in view of the urgency in light of the honourable jurisdictional High Court aforesaid order. The learned CIT DR showed his inability to give any definite answer.

Learned counsel of the assessee Shri Salil Kapoor submitted that for assessment and 1997-98 in which there is a direction from honourable High Court the same cannot be heard in isolation of earlier assessment years which are also listed today and have identical matters. The bench was informed that Shri Dave is also nominated to argue in these cases also on behalf of the revenue.

With the consultation and consent of both the parties the appeals are fixed for hearing on 21.6.2021.

The revenue has been directed to ensure the presence of representative so that the matter can be taken up on the designated date of hearing.

5. Thereafter, when the appeal came for hearing on 21/06/2021, the ld. DR submitted that he is ready to argue the case in ITA No. 216/Chd/2011 which has a bearing on other appeal including the stay granted appeal. For other appeal he sought stay on the ground that Shri Girish Dhare revenue's counsel has still not recovered. However, the hearing of appeal could not come to completion for reasons which are self explanatory in the order sheet entry dated 24.06.2021.

Earlier in this case learned CIT-DR has submitted that Shri Girish Dave has been appointed to argue this case alongwith other cases which are stay granted of the same assessee. That adjudication of the stay granted appeals is dependent upon adjudication of this appeal as issue of eligibility of section 80IA of the I.T. Act in the first year is there in this appeal. Since Shri Girish Dave is in disposed of for quite some time, learned CIT-DR agreed to argue the case himself. After taking the Bench through the Assessing Officer and learned CIT(A)'s orders CIT-DR wanted to refer six paper books submitted by the Revenue. Hearing of the appeal was adjourned to locate these paper books.

Today when the matter was taken up CIT-DR requested that a lot of physical paper needs to be referred. Hence, the matter should be adjourned awaiting commencement of physical hearing.

Per contra, learned Counsel of the assessee Shri Salil Kapoor strongly objected to learned CIT-DR seeking a physical hearing in second day of arguments after almost completing his arguments. Learned Counsel of the assessee insisted that this matter should be continued to be heard.

Upon careful consideration, we are of the considered opinion that in these time of Pandemic when hearings are taking place on virtual basis, it is not appropriate for the bench to force any of the parties to proceed with the arguments if the said party insist for physical hearing. Although we are fully in agreement with learned counsel that if CIT-DR wanted a physical hearing, he should have said the same in the beginning itself in the commencement of hearing. We further note that other appeals in the group case have earlier been adjourned to 16.8.2021 as Revenue's counsel Shri Girish Dave was not well. There was also a direction of Hon'ble President that since hearing of the stay granted matters is dependent upon the outcome of this appeal, all these appeals should be heard together in the consolidated manner. Accordingly, this appeal is adjourned to 16.8.2021 to be heard alongwith other appeals with which this has been consolidated earlier. Hence, adjourned to 16.8.2021.

6. Thus it is clear that non completion of hearing of this appeal is solely attributable to revenue. In these circumstances, we are of the considered opinion that there is no change in facts and circumstances of the case. Accordingly, we extend the stay for a period of six months or till the disposal of the appeal whichever is earlier.

Order pronounced in the open court on 12 .07.2021

Sd/-
(Pavan Kumar Gadale)
Judicial Member

Sd/-
(Shamim Yahya)
Accountant Member

Mumbai; Dated : 12.07.2021

Thirumalesh, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)

4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai