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IN THE HIGH COURT OF DELHI AT NEW DELHI

MANMOHAN; DINESH KUMAR SHARMA, JJ.

W.P.(C) 4660/2022 & C.M.Nos.13978-13979/2022; 23rd March, 2022

TATA TELESERVICES LIMITED

versus

COMMISSIONER OF INCOME TAX, INTERNATIONAL TAXATION-3 & ANR.

Income Tax Act, 1961; Section 201(1) / 201(1A) - Disputed Tax Demand - Pre-condition to deposit 20% of the disputed tax for stay of recovery proceedings can be relaxed in appropriate cases. (Para 5)

Petitioner Through Mr.Kamal Sawhney with Mr.Prashant Meharchandani, Mr.Nikhil Agarwal, Mr.Arun Bhaduria and Mr.Nishank Vashistha, Advocates.

Respondents Through Mr.Sunil Agarwal, senior standing counsel with Mr.Tushar Gupta and Mr.Samarth Chaudhari, Advocates.

J U D G M E N T

MANMOHAN, J:

1. Present writ petition has been filed challenging the orders dated 28th February, 2022 and 14th March, 2022 passed by the Respondents whereby the stay application filed by the Petitioner had been disposed of. It is pertinent to mention that the disputed demand of Rs.42,40,72,259/- has arisen from an order dated 08th December, 2021 passed under section 201(1)/201(1A) of the Income Tax Act, 1961 ("Act") wherein the Petitioner was held to be an assessee in default for failure to deduct tax at source while making interest payments to China Development Bank ("CDB").

2. Vide the impugned Orders dated 28th February, 2022 and 14th March, 2022, the Petitioner was granted stay till the disposal of the first appeal subject to payment twenty percent of the total demand i.e. Rs.8,48,14,452/- in accordance with the condition stipulated in Clause (B) of Office Memorandum dated 29th February, 2016.

3. Learned Counsel for the Petitioner submits that the order dated 08th December, 2021 passed under section 201(1)/201(1A) of the Act in itself is manifestly against the plain language of law and was passed without following the principles of natural justice. He further states that the impugned orders dated 28th February, 2022 and 14th March, 2022 do not deal with the facets of prima facie case, balance of convenience and irreparable harm or injury.

4. Issue notice. Mr.Sunil Agarwal, learned standing counsel accepts notice on behalf of the Respondents. He states that the direction to deposit 20% of the demand is in accordance with the Office Memorandums dated 29th February, 2016 and 31st July, 2017.

5. Having heard learned counsel for the parties and having perused the two Office Memorandums, in question, this Court is of the view that the requirement of payment of twenty percent of disputed tax demand is not a pre-requisite for putting in abeyance recovery of demand pending first appeal in all cases. The said pre-condition of deposit

of twenty percent of the demand can be relaxed in appropriate cases. Even the Office Memorandum dated 29th February, 2016 gives instances like where addition on the same issue has been deleted by the appellate authorities in earlier years or where the decision of the Supreme Court or jurisdictional High Court is in favour of the assessee.

6. In fact the Supreme Court in the case of **PCIT vs. M/s LG Electronics India Pvt. Ltd. (2018) 18 SCC 447** has held that tax authorities are eligible to grant stay on deposit of amounts lesser than twenty percent of the disputed demand in the facts and circumstances of a case. The relevant portion of the said judgment is reproduced hereunder:

*‘Having heard Shri Vikramjit Banerjee, learned ASG appearing on behalf of the appellant and giving credence to the fact that he has argued before us that the administrative Circular will not operate as a fetter on the Commissioner since it is a quasi-judicial authority, we only need to clarify that in all cases like the present, **it will be open to the authorities, on the facts of individual case, to grant deposit orders of a lesser amount that 20%, pending appeal.**’*

7. In the present case, the impugned orders are non-reasoned orders. Neither the Assessing Officer nor the CIT have considered three basic principles i.e. the prima facie case, balance of convenience and irreparable injury while deciding the stay applications.

8. Consequently, the impugned orders and notices are set aside and the matter is remanded back to the Commissioner of Income Tax for fresh adjudication in the application for stay. However, before deciding the stay application, the Commissioner of Income Tax shall grant a personal hearing to the authorised representative of the Petitioner. For this purpose, list the matter before the Commissioner of Income Tax on 18th April, 2022.

9. It is clarified that till the stay application filed by the petitioner is not decided, no coercive action shall be taken by the respondents against the Petitioner in pursuance to the demand arising out of the order dated 08th December, 2021.

10. With the aforesaid directions, the present writ petition along with pending applications stand disposed of.