

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH ' D ' MUMBAI**

BEFORE SHRI N V VASUDEVAN, JM & SHRI R K PANDA, AM

Stay Application No. 119/Mum/2010

Arising out of
ITA No. 7360/Mum/2010
(Assessment Year 2006-07)

DHL Express (India) P Ltd 8 th Fl Dheeraj Arma A K Marg Bandra (E) Mumbai 51	Vs	The Addl Commr of Income Tax 10(1), Mumbai
(Applicant)		(Respondent)

PAN AABCD3611Q

Assessee by: Shri Kanchan Kaushal/Raju Vakharia
Revenue by: Shri Abanikanta Nayak/DR

ORDER

PER R K PANDA:

The assessee, through this Stay Application, is seeking the stay of realization of the total outstanding demand of ₹ 7,05,61,534/- which includes interest of ₹ 1,91,02,311/-.

2 The Id counsel for the assessee submitted that the assessee, DHL Express (India) Pvt Ltd (DHL India), is a subsidiary of Deutsche Post AG (DPAG). DPAG is one of the leading global logistics providers. The Express segment of DPAG is engaged in the business of operating an international air express network that provides courier services for the door-to-door delivery of documents and light parcels around the world. The assessee carries on business in India as an international air express net work service provider.

2.1 The assessee filed return of income declaring the income of ₹ 24,43,17,168/-. The Assessing Officer made reference u/s 92CA(1) of the I T Act to the TPO pursuant to which, the TPO initiated TP assessment proceedings. On the basis of the report of the TPO, the Assessing Officer completed the assessment on a total income of ₹ 39,25,07,460/-. Referring to a number of case decisions placed on the paper book, the Id counsel for the assessee, while trying to argue the case on merit, submitted that in view of various decisions which are directly in favour of the assessee, the additions made by the Assessing Officer are not sustainable; therefore, full stay of the demand should be granted. He submitted that the financial conditions of the assessee are not very good. He further submitted that since the order passed by the Assessing Officer is in conformity with the directions of the Dispute Resolution Panel u/s 144C of the I T Act, the assessee has directly filed appeal before the ITAT.

2.2 Referring to the provisions of sec. 35A of the Appellate Tribunal Rules 1963, he drew the attention of the Bench to sub.sec.(v) of the said Rules and submitted that only if an application for stay was made to the Revenue Authorities, then only the result thereof has to be enclosed along with the stay application. In the instant case, the assessee has directly come to the Tribunal; therefore, the assessee has not enclosed any such correspondence with the Revenue Authorities. For this proposition, he relied on the decision of the Allahabad Bench of the Tribunal in the case of Broswel Pharmaceutical Inc vs ITO reported in 83 TTJ 126. Referring to the said decision, he submitted that it is not mandatory on the part of the assessee to move application before the lower authorities for grant of stay of outstanding demand and hence directly moved application before the Tribunal for stay of realization of the demand. He

accordingly submitted that full stay of realization of the demand should be granted. He also requested for out of turn hearing of the matter.

2.3 The Id DR, on the other hand, while opposing the stay application submitted that the assessee has not moved application before the lower authorities for stay of realization of the demand. Referring to the decision of the coordinate Bench of the Tribunal in the case of RPG Enterprises Ltd. he submitted that although the Tribunal has unfettered power to grant stay of recovery without the Commissioner having been approached or having passed an order in this regard, yet practice of the Tribunal to insist that assessee should approach Commissioner for grant of stay of recovery of the disputed demand is for a purpose which is beneficial to interest of revenue. Referring to the said decision, he submitted that by this, the department would get an opportunity to study the situation and gather the necessary data for evaluating the application for stay and may also get an opportunity in protecting the interests of the Revenue. He accordingly submitted that the assessee may be directed to pay forthwith the entire outstanding demand.

3 We have considered the rival submissions made by both the sides. We find in the instant case, the assessment order has been framed which is in conformity with the directions of the Dispute Resolution Panel u/s 144C of the I T Act and therefore, the assessee has filed appeal before the Tribunal directly. We find the assessee in the instant case has also not moved any application before the Revenue authorities seeking stay of realization of the outstanding demand and has directly approached the Tribunal for stay of realization of the demand. From the various decisions filed before us, we find different views are available regarding the approach before the Tribunal directly for stay of realization of demand. In our opinion and in view of the decision of the Allahabad Bench of the

Tribunal in the case of Broswel Pharmaceutical Inc ., (supra) it is not mandatory on the part of the assessee to move application before the Revenue Authorities for granting of stay of outstanding demand. We, therefore, do not find any merit in the arguments advanced by the Id DR that the stay application should be rejected outright since the assessee has not moved any petition before the Revenue Authorities seeking stay of the demand. In our opinion, seeking stay before the lower authorities is directory and not mandatory. After hearing the rival submissions, we are satisfied that the assessee has a prima facie case. However, the assessee, in the instant case could not satisfactorily explain its financial hardship and the balance of convenience. We, therefore, direct the assessee to deposit an amount of Rs. 1.50 crores before 31.12.2010 and the balance demand is stayed till the disposal of the appeal or for a period of six months from the date of this order whichever is earlier.

4 Further, the request for early hearing is also granted subject to payment of the amount of ₹ 1.50crores and the appeal is fixed for hearing on 13.1.2011. No fresh notice is required to be issued as the order itself is deemed to be service of notice of hearing to both sides.

5 The assessee, if so advised, may file necessary paper book well in advance with a copy to the Id DR. The assessee is also directed not to seek adjournment.

6 In the result, the Stay Application is partly allowed.

Order pronounced on the 19th, day of Nov 2010.

Sd/-

Sd/-

(N V VASUDEVAN) Judicial Member	(R K PANDA) Accountant Member
--------------------------------------	------------------------------------

Place: Mumbai : Dated: 19th, Nov 2010

Raj*

Copy forwarded to:

1	Appellant
2	Respondent
3	CIT
4	CIT(A)
5	DR

/TRUE COPY/
BY ORDER

Dy /AR, ITAT, Mumbai