

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.2401 OF 2012****WITH****WRIT PETITION NO.2408 OF 2012**

M/s. Tata Toyo Radiators Private Limited

..Petitioner.

versus

Union of India,

Ministry of law and others

..Respondents.

.....

Ms. Aarti Sathe with Mr. Kalpesh Turalkar for the Petitioner.

Mr. N.N. Singh for the Respondents.

.....

**CORAM : DR.D.Y.CHANDRACHUD &
M.S. SANKLECHA, JJ.****19 March 2012.****P.C. :**

1. Rule, made returnable forthwith. Counsel appearing on behalf of the Respondents waives service. With the consent of counsel and at their request, the Petition is taken up for hearing and final disposal.

2. The challenge in these proceedings is to orders passed by the Assistant Commissioner of Income Tax, Circle 7, Pune and by the Additional Commissioner of Income Tax, Range 7, Pune, rejecting applications for stay of a demand for Assessment Years 2008-09 and 2009-10.

3. For both the Assessment Years in question assessment proceedings were completed under Section 143(3) of the Income Tax Act, 1961. There is a demand of Rs.5.76 Crores, based on the orders of assessment of which the principal amount due on account of tax is Rs.4.53 Crores and interest in the amount of Rs.1.23 Crores. (a chart showing the bifurcation has been placed on the record by Counsel appearing on behalf of the Petitioner.) A refund in the amount of

Rs.2.67 Crores was due to the Petitioner for Assessment Year 2011-12. The Petitioner has filed appeals before the Commissioner of Income Tax (Appeals) against the orders of assessment. The Petitioner requested the Assistant Commissioner of Income Tax, Circle 7 (the Second Respondent) to grant a stay of demand pending the disposal of the appeals. The Petitioner was informed by a communication dated 7 February 2012 that the applications for stay were disposed of and the Petitioner was directed to make full payment of the demand raised. By a letter dated 15 February 2012, the Petitioner requested the ACIT that since a refund was due for Assessment Year 2011-12 of Rs.2.67 Crores that may be adjusted against the demand for Assessment Years 2008-09 and 2009-10 while the balance may be kept in abeyance. Moreover it was stated that the appeals filed before the CIT (Appeals) for Assessment Years 2006-07 and 2007-08 have already been heard and orders were awaited. In these circumstances, a stay of the balance demand was sought. A further communication was addressed on 9 March 2012 to the Additional Commissioner of Income Tax, Range 7 (the Third Respondent) upon which the authority has endorsed to the effect that since the ACIT, Circle 7 has already started recovery proceedings, there is no point before him to consider. On 9 March 2012 a garnishee notice has been issued to the State Bank of India, the bankers of the Petitioner under Section 226(3) calling upon the bank to forthwith pay the amount of the demand due.

4. On the request of Counsel appearing on behalf of the Petitioner we grant leave to amend the Petition to impugn the notice under Section 226(3). The amendment may be carried out forthwith. Verification dispensed with.

5. Counsel appearing on behalf of the Petitioner submits that -

- (i) Absolutely no reasons have been indicated by the ACIT for rejecting the applications for stay of demand contrary to the law laid down by this Court;
- (ii) Out of a total demand of Rs.5.76 Crores for the two Assessment Years, an amount of Rs.2.67 Crores has already been adjusted against the refund due for Assessment Year 2011-12 leaving a balance outstanding of Rs.3.08

Grores;

- (iii) The appeals filed by the Petitioner for Assessment Years 2006-07 and 2007-08 were heard by the CIT (Appeals) in September 2010, but the orders are still awaited. The outcome of those appeals would substantially govern the disallowances which have been made for the two Assessment Years to which these proceedings relate;
- (iv) The manner in which, the stay applications have been disposed of and hasty recourse has been taken to the provisions of Section 226(3) would disclose a complete state of arbitrariness; and
- (v) As a result of the garnishee order, the Petitioner would be unable to meet its contractual and other obligations in the course of its business.

6. On the other hand, counsel appearing on behalf of the Revenue has submitted that the Petitioner should be required to pay the balance of the demand and no case for stay has been made out.

7. In several judgments of this Court, the parameters for the exercise of the jurisdiction under Section 220(6) of the Income Tax Act 1961 have been spelt out. In **KEC International Ltd. v. B.R. Balakrishnan**¹, the Division Bench emphasised the importance of reasoned orders being passed on the applications for stay. The Assessing Officers consistently refuse to follow the law laid down in the judgment of the Division Bench of this Court. The Assessing Officers and the Appellate Authorities are duty bound to act in accordance with binding precedent and there is no reason or justification to act in the manner in which the applications for stay have been disposed of in this case. The assessment orders would indicate that disallowances have been made on several grounds including (i) Administrative charges paid to a JV Partner; (ii) Contingent liability debited to the P & L Act; (iii) Profit on the sale of fixed assets; (iv) Product warranty charges; and (iv) Rent paid for expatriate employees. Before this Court it is not in dispute that many of these issues would be governed by the proceedings which are pending before the CIT (Appeals) for Assessment Years

¹ (2001) 251 ITR 158.

2006-07 and 2007-08 which have been heard, but where orders are awaited. Out of the total demand of Rs.5.76 Crores, adjustment has already been made of Rs.2.67 Crores out of the refund due for Assessment Year 2011-12. Nearly 46% of the demand for the two years had already been recovered. In that view of the matter, we are of the view that the ends of justice would be met by issuing the following directions :

- 1) The recovery of the balance of the demand for Assessment Years 2008-09 and 2009-10 shall remain stayed pending the disposal of the appeals filed by the Petitioner before the CIT (Appeals);
- 2) The directions issued under Section 226(3) of the Income Tax Act 1961 on 9 March 2012 shall stand vacated; and
- 3) The CIT (Appeals) shall expeditiously decide upon the appeals for Assessment Years 2006-07 and 2007-08 which have already been heard and where orders are awaited and thereupon proceed to dispose of the appeals for Assessment Years 2008-09 and 2009-10.

There shall be an order in these terms. The Petitions are accordingly disposed of.

There shall be no order as to costs.

(Dr. D.Y. Chandrachud, J.)

(M.S. Sanklecha, J.)