

**IN THE INCOME TAX APPELLATE TRIBUNAL
"K" Bench, Mumbai**

**Before Shri D. Manmohan, Vice President
and Shri Rajendra, Accountant Member**

S.A. No. 288/Mum/2014
(Arising out of ITA No. 829/Mum/2014)
(Assessment Year: 2009-10)

M/s. Johnson & Johnson Ltd.
30 Forjett Street
Mumbai 400036

Additional Commissioner of IT, LTU
29th Floor, Centre No. 1, World
Vs. Trade Centre, Cuffe Parade
Mumbai 400005

PAN - AAACJ0886E

Applicant

Respondent

Applicant by: Shri M.P. Lohia
Respondent by: Shri Vijay Kumar Bora

Date of Hearing: 31.10.2014
Date of Pronouncement: 31.10.2014

ORDER

Per D. Manmohan, V.P.

By this stay application the assessee seeks stay of collection of outstanding demand of ₹43,24,08,871/-.

2. The AO made a reference to Transfer Pricing adjustments under section 92C of the Act for determining the arm's length price of the international transactions. Thereafter an order was passed by the AO determining the income of the assessee at ₹353.30 crores and raised additional demand of ₹116.27 crores. Vide application dated 19.02.2014 the assessee submitted before the ITAT "A" Bench, Mumbai that the company has a strong prima facie case and the balance of convenience is in favour of granting stay of collection of outstanding demand. Upon hearing the submissions of both the parties the Tribunal noticed that most of the issues as stated before the Tribunal have been decided in favour of the assessee in the orders passed by the Tribunal in assessee's own cases for earlier years and therefore it is a fit case for granting stay; only adjustment of ₹7.50 crores has to be carried out by the AO.

Accordingly the demand is stayed till the disposal of the appeal by the Tribunal and the AO is directed not to make any adjustment except the above amount of ₹7.50 crores. Despite a specific direction by the Bench the AO decided to adopt an innovative method of collecting the revenue by utter disregard of the Tribunal order and obtained a consent letter from the assessee and collected a sum of ₹16.64 crores during the subsistence of the said order. Thus, the amount outstanding has been further reduced to ₹43,24,08,871/-. Though the case was posted from time to time, the same was adjourned at the request of the learned D.R. or for want of time, and hence the assessee had to file a fresh stay application for extension of the stay.

3. At this time it came to the light that the AO has followed an innovative method of collecting taxes despite specific directions of the Bench. Therefore we had called the AO who had collected the revenue by flouting the directions of the Bench. Shri Vishal Makawane, DDIT (Inv), Unit-VII(1), Mumbai appeared before us and tendered an unconditional apology for his conduct and submitted that it was collected with the consent given by the appellant vide letter dated 23.04.2014. The hapless Representative of the assessee had no other alternative but to admit that he has given the consent letter. It deserves to be clarified that neither the assessee nor the Revenue has the right to flout the decision of the Tribunal and being an officer functioning under the Government of India it is his obligation to follow the directions of the superior authority and even if there is consent he should not have collected the amount. We have recently come across in few other cases where similar consent letters were obtained or the Department has collected tax despite the stay order passed by the ITAT. We deplore this practice and direct the Chief Commissioner of Income Tax to issue a letter to all the concerned Assessing Officers not to adopt this kind of approach of obtaining consent letters and to respect the order passed by the Tribunal as otherwise the Tribunal would be constrained to view the conduct of the Department adversely.

4. With these observations we hereby grant stay of collection of outstanding demand for a further period of six months and also direct the

AO to refund the amount collected contrary to the order passed by the ITAT in S.A. No. 50/Mum/2014. The amount alongwith interest shall be refunded within 15 days and the AO is directed to furnish the proof of refunding the amount before the Bench.

5. In the result, the Stay Application filed by the assessee is allowed.

Order pronounced in the open court on 31st October, 2014.

Sd/-
(Rajendra)
Accountant Member

Sd/-
(D. Manmohan)
Vice President

Mumbai, Dated: 31st October, 2014

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The DRP-III, Mumbai*
4. *The CIT- CIT/DIT concerned*
5. *The DR, "K" Bench, ITAT, Mumbai*

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

n.p.