

(2013) 05 DEL CK 0444
In the Delhi High Court
Case No : Writ Petition (C) 3183 of 2013

Unitech Limited

APPELLANT

Vs

Additional Commissioner of Income Tax and Others

RESPONDENT

Date of Decision : 15-05-2013

Acts Referred:

Citation : (2013) 05 DEL CK 0444

Hon'ble Judges : Vibhu Bakhru, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : C.S. Aggarwal with Mr. Prakash Kumar, for the Appellant; Suruchi Aggarwal, for the Respondent

Judgement

Badar Durrez Ahmed, J.

CM No. 6044/2013 (exemption)

Exemption is allowed subject to all just exceptions.

WP (C) No. 3183/2013 and CM No. 6043/2013

1. This writ petition is directed against the order dated 08.05.2013 passed by the Commissioner of Income Tax which is similar to the earlier order passed by the said Commissioner on 11.02.2013. Both these orders pertain to the stay granted to the petitioner in respect of the demand raised against the petitioner pursuant to the assessment order dated 01.08.2012. The petitioner has filed an appeal, which is pending before the Commissioner of Income Tax (Appeals) and the petitioner has already argued the matter and submitted detailed written submissions before the Commissioner of Income Tax (Appeals). The remand report requested from the Assessing Officer which was earlier not complete, has now, according to learned counsel for the respondents, been completed. This is, however, disputed by the learned counsel for the petitioner. On 11.02.2013, the Commissioner while considering the stay application of the petitioner had concluded as under:-

3. I have gone through the petition filed by the assessee and discussed the same with the representative of the assessee, the order of stay of demand passed by the Additional CIT Rang 18 and the instructions of 1914 issued by CBDT for recovery of outstanding tax demand. I am of the opinion that there are exceptionally and compelling circumstances as the assessment order appears to be high pitched and a genuine hardship is likely to be caused to the assessee, this order is being passed by the undersigned. As elaborated in the order dated 16/11/2012 passed by the Additional CIT Range-18 the undisputed demand amounts to Rs. 369 crore. In any case, the assessee has to pay the entire undisputed demand immediately but looking into the hardship which may cause to him and the fact that the securities having face value more than total tax demand have already attached by the Department the following arrangement is made:

(i) The disputed demand which amount to Rs. 665 crore is stayed till 31/3/2013. The assessee is advised to cooperate and file details before the learned CIT(A) so that his appeal is decided at an early date.

(ii) Out of undisputed demand of Rs. 369 crores the assessee should pay at least 30 crore more till the end of the Financial Year 2012-13 in equal two instalments of Rs. 15 crore each. In case he is not able to pay 15 crore per month he is to make good for the same in the next installments. In any case, the total payment should not be less than 30 crore upto 31/3/2013.

(iii) The first installment should be paid by 20/2/2013 and the second by 20/3/2013. This order shall be reviewed on 10th of April, 2013.

(iv) It has been made clear that failure to adhere to the arrangement of payment of demand will render the assessee for coercive action for recovery by treating assessee in default.

(Underlining added)

2. It will be noticed from the above extract that at that point of time, the Commissioner was under the impression that the disputed amount was Rs. 665 crores and the amount of Rs. 369 crores was undisputed. While, the Commissioner had stayed the recovery of the disputed amount of Rs. 665 crores till 31.03.2013, the Commissioner directed the petitioner to pay at least Rs. 30 crores more (in addition to the Rs. 13 crores already paid by the petitioner) by the end of the financial year 2012-2013. We are informed that the said sum of Rs. 30 crores has been paid by the petitioner. The Commissioner, by virtue of the order dated 11.02.2013 had directed that the same would be reviewed on 10.04.2013. In between, the petitioner had filed a writ petition before this Court being W.P. (C) No. 2585/2013. In that writ petition, one of the contentions was that while the petitioner was being directed to pay a sum of Rs. 30 crores, the appeal was itself being delayed on account of the Assessing Officer not furnishing the comments on the written submissions submitted by the petitioner on 11.03.2013 and 21.03.2013. After hearing the learned counsel for the parties,

we disposed of the said writ petition by an order dated 23.04.2013 in the following manner:-

WP (C) 2585/2013 & CM 4906/2013 (stay)

By an order dated 11.02.2013 the Commissioner of Income Tax stayed the collection of demand of the tax by passing a conditional order. The condition was that the petitioner would pay an amount of Rs. 30 Crores by the end of the financial year 2012-13. It was also stated in the order that the same would be reviewed on 10.04.2013. Apparently, nothing happened on 10.04.2013 but a hearing was granted on 16.04.2013, when the matter was apparently adjourned to 22.04.2013. According to the petitioner, the Commissioner had orally rejected the prayer for further extension of the stay granted by the Commissioner. However, according to the learned counsel for the respondent, the Commissioner had fixed 22.04.2013 as the date for further consideration.

Be that as it may, we feel that since the Commissioner, in the order dated 11.02.2013 has herself stated that the order would be reviewed on 10.04.2013. As such, it would be appropriate if the Commissioner considers the same and passes an order in respect of the future. The learned counsel for the petitioner has contended that the appeal pending before the Commissioner of Income Tax (Appeals) is being delayed unnecessarily because the Assessing Officer is not furnishing the comments on the written submissions submitted by the petitioner on 11.03.2013 and 21.03.2013. He further stated that the appeal is now fixed for hearing on 26.04.2013 and that the petitioner has till date not received a copy of the comments.

After hearing counsel for the parties, we are disposing this writ petition with the direction that the Commissioner shall review the arrangement of stay within two weeks. In the first instance, the petitioner shall appear before the Commissioner on 29.04.2013 at 11:00 a.m. We also direct that the Commissioner of Income Tax (Appeals) who is seized of the matter shall dispose of the appeal as expeditiously as possible. The Assessing Officer shall also furnish his comments at the earliest.

Till the Commissioner decides the further course of action after hearing the petitioner on 29.04.2013, the respondent shall not take any coercive steps.

The writ petition stands disposed of as above.

3. Thereafter, the matter was reviewed by the Commissioner and upon review the impugned order dated 08.05.2013 has been passed. By virtue of the said order, the Commissioner has, inter alia, concluded as under:-

10. I have gone through the decisions cited by the assessee company with regard to stay of outstanding demand. I am of the opinion that though there are compelling circumstances as the assessment order appears to be high pitched and a genuine hardship is likely to be caused to the assessee, the outstanding tax dues have to be paid by the assessee within a reasonable time. The

instruction No. 1914 also provides that:

(ii) In granting stay, the Assessing Officer may impose such condition as he may think fit. Thus he may,-

(a) require the assessee to offer suitable security to safeguard the interest of revenue;

(b) require the assessee to pay towards the disputed taxes a reasonable amount in lump sum or in installments;

(c) require an undertaking from the assessee that he will cooperate in the early disposal of appeal failing which the stay order will be cancelled;

(d) reserve the right to review the order passed after expiry of reasonable period, say upto 6 months, or if the assessee has not cooperated in the early disposal of appeal, or where a subsequent pronouncement by a higher appellate authority or court alters the above situations;

(e) reserve a right to adjust refunds arising, if any against the demand.

(iii) Payment by installments may be liberally allowed so as to collect the entire demand within a reasonable period not exceeding 18 months.

11. Accordingly, looking into the facts and circumstances of the case and the fact that the investments in shares have already been attached and the book value of such investments is more than the demand outstanding against the assessee and that if coercive measures are taken to collect the entire demand, it will put assessee in undue hardship, the following arrangement is made:

(i) This order is being passed initially for the three months and shall be reviewed on 12-08-2013 or on receipt of order of CIT(A), whichever is earlier.

(ii) The assessee should pay demand by way of installments of Rs. 80 crore each. The first installment should be paid by 20/05/2013 and then by 20th day of each month starting from June, 2013.

(iii) It has been made clear that failure to adhere to the arrangement of payment of demand will render the assessee liable for coercive action for recovery of arrear tax, by treating the assessee in default.

(Underlining added)

4. We have heard learned counsel for the parties at length. While, learned counsel for the petitioner strenuously urged that the petitioner is under no position (financially) to make the payments as per the directions of the Commissioner by virtue of the impugned order and that the petitioner has an excellent case, we feel that the Commissioner ought to have stuck to the same methodology of payment as indicated in the earlier order dated 11.02.2013. At that point of time, the Commissioner had only directed the payment of the undisputed amount of Rs. 369 crores by requiring payment in two installments of

Rs. 15 crores each so that the amount of Rs. 30 crores is collected by the end of financial year 2012-2013. However, now, after the entire amount is disputed, yet the Commissioner has directed the assessee to pay the demand by way of installments of Rs. 80 crores each month, the first being due on 20.05.2013. Initially, the installments are to be for 03 months inasmuch as the order is to be reviewed on 12.08.2013 or on receipt of the order the Commissioner of Income Tax (Appeals), whichever was earlier.

5. We feel that since the Commissioner had initially only directed payment of installments of Rs. 15 crores each month, the same should have been continued even by virtue of the subsequent order, particularly, as at the stage of passing the subsequent order, the petitioner had clarified that the entire amount was disputed. That being so, we modify the order of the Commissioner dated 08.05.2013 to the extent that instead of paying installments of Rs. 80 crores each month, the petitioner shall pay installments of Rs. 15 crores each month. The first installment shall be due on 31.05.2013 followed by payments each month to the extent of Rs. 45 crores.

6. We also direct that the Commissioner of Income Tax (Appeals) to dispose of the appeal positively within three months, that is, by 31.08.2013. With these observations and directions, the writ petition is disposed of.

Dasti.