

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3225 OF 2009

Coca Cola India Pvt. Limited,)
a Company incorporated under the)
Companies Act, 1956 and having its)
registered Office at Plot No.1109-)
1110, Pirangut, Tal. Mulshi,)
Pune - 412 108.) ..Petitioner.

V/s.

1. The Additional Commissioner)
of Income-tax, having his)
office at Range 1, Pune "A")
Wing, 2nd floor, PMT Building,)
Shankar Sheth Road, Swargate,)
Pune - 411 037.)
)
2. The Commissioner of Income)
-tax-I, having his office)
Pune "B" Wing, 1ST floor,)
PMT Building, Shankar Sheth)
Road, Swargate, Pune-411 037.)
)
3. The Union of India, having)
its office at Aaykar Bhavan,)
Marine Lines, Mumbai.) ..Respondents.

Mr.S.E.Dastur, senior Advocate with Mr.Percy Pardiwala,
senior Advocate, Mr.Murlidhar, Mr.Arun Siwach and Mr.
Aditya Mehta i/b. Amarchand Mangaldas & S.A.Shroff &
Co. for the petitioner.

Mr.Vimal Gupta Advocate for respondents.

CORAM : SMT. RANJANA DESAI AND
J.P.DEVADHAR, JJ.

DATED : 31ST MARCH, 2009.

JUDGMENT (PER J.P.DEVADHAR, J.)

1. Rule. Rule, made returnable forthwith. By

consent of parties, the petition is taken up for final hearing.

2. The petitioner is aggrieved by the order passed by the ACIT on 13/3/2009 whereby the petitioner is directed to pay 50% of the demands outstanding from AY 1999-00 to AY 2004-05 and payment of 40% of the demand outstanding from assessment year 2005-06.

3. According to Mr.Dastur, learned senior Advocate appearing on behalf of the petitioner, the demands for all the above assessment years are raised by disallowing deduction of expenses on service charges and marketing expenses. All these disallowances do not survive in view of the judgment of the ITAT for AY 1997-98 wherein similar expenses incurred by the petitioner have been held to be allowable and, therefore, the demands raised for all these subsequent assessment years are unsustainable.

4. It is further contended by Mr.Dastur that hearing of the appeals filed against the assessment for AY 1999-00 to 2003-04 have already been commenced by the ITAT and in those proceeding the revenue has been taking time, as a result whereof there is delay in the disposal of the appeals and the next date for hearing of those appeals are fixed on 27th April, 2009. In

these circumstances, for the delay caused by the revenue the petitioner cannot be made to suffer.

5. As regards the demands raised for A.Y. 2004-05 pursuant to the assessment order dated 29/12/2006, Mr.Dastur submitted that the said demand was stayed and the stay was extended upto 28/2/2009. Even before the said stay expired, the petitioner on 24/2/2009 filed an application seeking extension of stay till the disposal of the appeal and the said application is still pending.

6. Similarly, an application seeking stay of demand raised for AY 2005-06 was filed on 30/1/2009 and the said application is still pending. In these circumstances, seeking enforcement of the demands without hearing the petitioner and without disposing of the stay application is totally illegal and contrary to the binding decision of this Court. Accordingly, Mr. Dastur submitted that the impugned order dated 13/3/2009 be quashed and set aside and the demands for A.Y. 1999-2000 to 2005-06 be stayed till the disposal of the appeals filed for the respective assessment years.

7. Mr.Gupta, learned counsel appearing for the respondents on the other hand submitted that the order

of the ITAT for AY 1997-98 is distinguishable on facts and, therefore, the petitioner is not justified in arguing that in view of the decision of the Tribunal in respect of AY 1997-98, the demands for the subsequent years are not sustainable.

8. Mr.Gupta further submitted that it is not correct to state that the counsel for the revenue had represented to the ITAT that the demands raised for the assessment years in question would not be enforced till the disposal of the appeals pending before the ITAT. He submitted that the statement made by the counsel for the revenue was to apply for the period from the date of adjournment till the next date of hearing of the appeals for A.Y. 1999-2000 to 2003-04 and not till the disposal of the appeals in all the assessments.

9. Mr.Gupta further submitted that the stay granted in respect of the demands relating to AY 1999-00 to 2004-05 have already expired and, therefore, the ACIT was justified in demanding 50% of the tax due and payable by the petitioner. Mr.Gupta submitted that the total demand raised for AY 1999-00 to 2005-06 is more than Rs.600 crores out of which the demand for AY 2005-06 is Rs.67.84 crores for which there is no stay granted. In these circumstances, Mr. Gupta submitted that the demand raised by the impugned order cannot be

faulted.

10. We have carefully considered the rival submissions.

11. There is no dispute that the demands raised for A.Y. 1999-2000 to 2005-06 are mainly on account of the disallowance of expenses incurred by the assessee as service charges and marketing expenses. Admittedly, similar disallowance made by the assessing officer in AY 1997-98 have been deleted by the ITAT by holding that the Petitioner is entitled to the deduction.

12. Assuming that the revenue is entitled to argue that the circumstances in which the deductions were allowed in AY 1997-98 were different from the circumstances prevailing in AY 1999-00 to AY 2005-06, the question still to be considered is whether the demands could be enforced at this stage especially when for all these years the demands were stayed and the appeals against the assessments for AY 1999-2000 to AY 2003-04 are partly heard by ITAT.

13. It is not in dispute that the delay in disposal of the appeals for AY 1999-2000 to 2003-04 was on account of the counsel for the revenue seeking adjournment and also on account of the non availability

of the Bench. In these circumstances, where the delay in disposal of the appeals is not attributable to the petitioner, the demand cannot be enforced on the ground that the appeals are pending for long time.

14. It is pertinent to note that the Petitioner had made an application before ITAT seeking stay of the demands but the same was rejected on account of the statement made by the counsel for the revenue to the effect that the demands would not be enforced.

15. From the petition it is seen that the demand raised for AY 1999-2000 as per assessment order passed on 28/3/2002 was admittedly stayed upto October, 2008. Similarly, assessment orders for AY 2000-01 was passed on 31/3/2003 and stay was granted upto July, 2008. Assessments for AY 2001-02, 2002-03 and 2003-04 were passed on 31/3/2004 31/3/2005 and 30/3/2006 respectively and demands raised pursuant thereto were stayed till 20/12/2008, October, 2008 and October, 2008 respectively. In these circumstances, since the appeals for AY 1999-2000 to 2003-04 are already part heard and the revenue is responsible for the delay in the disposal of the appeals, in our opinion, it is just and proper to stay the demands till the disposal of the said appeals.

16. As regards assessment years 2004-05 and 2005-06 is concerned, the petitioner has applied for continuation of stay / stay and the said applications filed on 24/2/2009 and 30/1/2009 respectively are still pending.

17. In these circumstances, we are of the opinion that the interest of justice would be met by passing the following order :

a) Impugned order dated 13-3-2009 is quashed and set aside.

b) The demands raised for AY 1999-2000 to 2005-06 shall remain stayed till the disposal of the appeals for AY 1999-2000 to 2003-04 pending before the ITAT and for a period of eight weeks thereafter.

18. Rule is made absolute in the above terms with no order as to costs.

(SMT. RANJANA DESAI, J.)

(J.P.DEVADHAR, J.)