

E-214  
17-10-12

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH FRIDAY 'E' NEW DELHI

BEFORE SHRI J.S. REDDY, ACCOUNTANT MEMBER  
SHRI CHANDRAMOHAN GARG JUDICIAL MEMBER

STAY NO.177 TO 183/DEL/2012  
( IN ITA No. 3696 TO 3702/DEL/2009)  
ASSTT. YEAR: 2000-2001 TO 2006-07

Qualcomm Incorporated,  
5775, Morehouse Drive,  
San Diego, California,  
United States of America-92121  
(Appellant)

vs Asstt. Director of Income Tax,  
Cir. 2(1), International Taxation,  
New Delhi.

(Respondent)

Appellant by: Shri Salil Kapoor, Ankit Gupta, Vikas Jain  
Respondent by: Shri Jasdeep Singh, Sr. DR

ORDER

PER CHANDRAMOHAN GARG, J.M.

These stay applications have been filed by the assessee praying for extension of stay of outstanding demand from AY 2000-01 to 2006-07.

2. Briefly stated, the facts giving rise to these stay applications are that the assessee was granted stay of collection of taxes by this Bench on 12.03.2012 for a period of six months or till the disposal of relevant appeals, whichever is earlier. We also observe that at the first occasion, stay was granted by order dated 4.3.2011 for six months and, thereafter, it was extended for another six months through order dated 16.9.2011 and third



time, the stay was further extended for another six months through order dated 12.3.2012 mentioned hereinabove.

3. Ld. counsel for the assessee pointed out that in para 2 of third order dated 12.03.2012, this Bench categorically mentioned the events that took place in these appeals and held that since there was no default on the part of assessee and non-disposal of appeals has been occasioned by the reasons beyond the control of the assessee, therefore, the stay may be extended.

4. Ld. counsel for the assessee submitted that these appeals have already been heard and awaiting adjudication and the outstanding demand for AY 2007-08 has been stayed in stay application no. 135/D/2012 (In ITA No. 5343/D/2010) by order dated 09.07.2012 for a further period of six months from the date of order or till disposal of appeal, whichever is earlier.

5. Ld. DR placed his reliance on the judgment dated 05.07.2012 of Hon'ble High Court of Karnataka in ITA No.160 of 2012 in the case of C.I.T. vs M/s Ecom Gill Coffee Trading Pvt.Ltd. wherein it was held as under:-

*"Viewed from any angle, we are of the opinion that the Appellate Tribunal has committed a positive error in consciously extending the interim order of stay granted in the pending appeal beyond the period of 365 days, which is the outer limit stipulated in the statutory provision. For this reason, we allow these appeals. Though the main matter has been disposed of as of now and the appeal was against an interim order, by clarifying the legal position."*



6. The Id. DR also submitted that in ITA No.5343/D/2010, stay of outstanding demand has been extended by order of this Bench dated 09.07.2012 for a period of six months from the date of order or till the disposal of appeal whichever is earlier and this appeal for AY 2007-08 along with seven appeals related to these stay applications in hand have been heard. He has no serious objection in extension of stay.

7. The assessee's representative relied on the judgment of Bombay High Court in the case of Commissioner of Income Tax vs Ronuk Industries Ltd. (2011) 333 ITR 99 wherein it was held that the stay of outstanding demand can be extended beyond a period of <sup>2</sup>365 days. As per the provisions of Section 254(2A) of the Act, notwithstanding the amendment in the third proviso to Section 254(2A) by the Finance Act, 2008 w.e.f. 1<sup>st</sup> October, 2008 providing that order of stay granted shall vacate after the expiry of 365 days even if delay in disposing of the appeal is not attributable to the assessee. The assessee's representative also placed his reliance on the judgment of ITAT Mumbai 'F' Special Bench in the case of Tata Communications Ltd. vs ACIT (2011) 138 TTJ (Mumbai) (SB) 257 wherein following the judgment of Hon'ble Bombay High Court in the case of Ronuk Industries Ltd. (supra), it was held that where the delay in disposal



of pending appeal is not attributable to the assessee, the Tribunal has the power to extend the stay beyond the period of 365 days even after the amendment of third proviso to Section 254(2A) of the Act w.e.f. 1.10.2008.

8. On careful consideration of submissions and facts and circumstances of the case in the light of citations placed before us, at the outset, we observe that ITAT Mumbai Special Bench in the case of Narang Overseas (P) Ltd. vs ACIT (2008) 114 TTJ (Mumbai)(SB) 433, held that if there be cleavage of opinion amongst different High Courts and there being no decision of the jurisdictional High Court on the issue, then the view favourable to the assessee has to be adopted.

9. Ld. DR has not disputed this point that the assessee has already been granted stay of demand on earlier three occasions and all the conditions of payment and installments have been complied with by the assessee. It is also not in dispute that the delay in disposal of appeals is not exclusively attributable to the assessee. Therefore, we find merit in the argument of the ld. counsel for the assessee that in these circumstances, the grant of stay beyond 60 days would be in the interest of natural justice as held by Hon'ble Bombay High Court in the case of Ronuk Industries Ltd. (supra) and by the



Special Bench of ITAT, Mumbai in the case of Tata Communications Ltd.  
 (supra).

10. We also observe that the stay of outstanding demand of tax for AY 2007-08 has already been extended upto 9.1.2013 or till the disposal of the appeal whichever is earlier and this appeal along with other seven appeals of the assessee related to present stay applications have been heard and these are on the verge of adjudication. In view of above facts and circumstances, we are inclined to further stay the demand in question till 9.1.2013 or till the disposal of the appeal whichever is earlier.

11. In the result, the assessee's applications for extension of stay are allowed.

Order pronounced in the open court on 28.09.2012.

Sd/-  
 (J.SUDHAKAR REDDY)  
 ACCOUNTANT MEMBER

DT. 28<sup>th</sup> OCTOBER, 2012  
 'GS'

Sd/-  
 (CHANDRAMOHAN GARG)  
 JUDICIAL MEMBER

Copy forwarded to:-

1. Appellant *By hand*
2. Respondent
3. Commissioner of Income Tax(A)
4. CIT. 5. DR



By Order

Asstt. Registrar

सहायक रजिस्ट्रार

Assistant Registrar.

असिस्टंट रजिस्ट्रार

Income tax appellate Tribunal

दिल्ली बेंच, ई दिल्ली

Delhi Bench. <http://www.itatonline.org>