

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH AHMADABAD**

Before Shri D.K.Tyagi, Judicial Member and
Shri T.R. Meena, Accountant Member

S.A. No. 86/Ahd/2012 (Arising out of ITA No.386/Ahd/2011) Assessment Year :2008-09 & S.A. No. 87/Ahd/2012 (Arising out of ITA No.387/Ahd/2011) Assessment Year :2009-10

Vodafone West Limited (formerly known as Vodafone Essar Gujarat Limited) Vodafone House, Corporate Road, Praladnagar, Off S.G.Road, Ahmadabad 380015	V/s.	Asst. Commissioner of Income Tax TDS Circle, Ahmedabad
PAN No. AAACF1190P		
(Appellant)	..	(Respondent)

अपीलार्थी की ओर से By Appellant	Shri S. N. Soparkar, Sr. Adv. With Shri Dhiren Shah
प्रत्यर्थी की ओर से/By Respondent	Shri Shelly Jindal, CIT D.R.
सुनवाई की तारीख/Date of Hearing	04.01.2013
घोषणा की तारीख/Date of Pronouncement	11.01.2013

ORDER

PER : T.R.Meena, Accountant Member

These are stay petitions filed by the appellant for A.Y. 08-09 & 09-10.

As per stay petitions, the total demand were created by the A.O. as under:

In A.Y. 08-09

- (i) Total demand u/s.201(1) & Section 201(1A) as per 201 order- 7.21 crore
- (ii) Amount already paid – 6.37 Crore
- (iii) Amount outstanding - Rs.83.69 lacs.
- (iv) Percentage of payment - 90%

In A.Y. 09-10

- (i) Total demand u/s.201(1) & Section 201(1A) as per 201 order- 9.04 crore
- (ii) Amount paid - 6.62 crore
- (iii) Amount outstanding - Rs.2.41 crore
- (iv) Percentage of payment - 75%

At the time of hearing, Shri S.N. Soparkar, Sr. Advocate, appeared on behalf of the assessee and explained that in this case, first stay order was granted by the Co-ordinate 'A' Bench on 25.03.2011 up to 180 days or till the disposal of the assessee's case. The first stay was up to 25.09.2011, but the appellant's case was not disposed of. Thus, he again requested to extend the stay for further time. The Co-ordinate 'A' Bench vide order dated 07.10.2011 had again extended the stay for the period of 180 days from the date of this order or till disposal of the appeal. This order was effective up to 07.04.2012. The further extension of stay petition was filed on 02.04.2012 by the appellant for both the years, which was extended by the 'A' Bench for the further period of 180 days or decision to the Tribunal, which was prevail first. This order was

effective up to 29.12.2012. The appellant further filed extension application on 20.12.2012 in pursuant to stay order dated 29.06.2012. The Id. Counsel for the appellant contended that appeal for both years have been filed before the Hon'ble Tribunal, the issue involved in these years is identical with the case of Idea Cellular Ltd. and Bharti Cellular Ltd., has already been pending for the final hearing before the Hon'ble Supreme Court of India. The matter of Vodafone Essar Cellular Ltd. has also been tagged along with the above matter. The Hon'ble Supreme Court of India had granted ad interim stay in the case of Bharti Cellular Ltd. on recovery of demand (copy of the order enclosed as Annexure J). In View of these facts, the appellant requested to extend stay for both the years as 90% demand in A.Y. 08-09 and 75% demand in 09-10 have been paid by the appellant. He further placed reliance on the decision of Bombay High Court in case of *Narang Overseas (P.) Ltd. v. ITAT, Prakash Dubey, , UOI and HDFC Asset Management Co Ltd. (295 ITR 22)*, wherein Hon'ble Bombay High Court held that the third proviso to section 254(2A) had not the effect of curtailing Tribunal's power to extend the period of stay. The relevant observation of the Hon'ble High Court is reproduced below:

"We are of the respectful view that the law as enunciated in Kumar Cotton Mills Pvt. Ltd. (supra) should also apply to the construction of the third proviso as introduced in Section 254(2A) by the Finance Act, 2007. The power to grant stay or interim relief being inherent or incidental is not defeated by the provisos to the sub-section. The third proviso has to be read as a limitation on the power of the Tribunal to continue interim relief in case where the hearing of the

Appeal has been delayed for acts attributable to the assessee. It cannot mean that a construction be given that the power to grant interim relief is denuded even if the acts attributable are not of the assessee but of the revenue or of the Tribunal itself. The power of the Tribunal, therefore, to continue interim relief is not overridden by the language of the third proviso to Section 254(2A). This would be in consonance with the view taken in Kumar Cotton Mills Pvt. Ltd. (supra). There would be power in the Tribunal to extend the period of stay on good cause being shown and on the Tribunal being satisfied that the matter could not be heard and disposed of for reasons not attributable to the assessee.”

He further submitted that this decision has again been followed by the Hon'ble Bombay High Court in the case of *CIT vs Ronuk Industries Ltd. (333 ITR 99)* and by Special Bench of Mumbai Tribunal in case of *Tata Communications Ltd vs ACIT (138 TTJ 257)*. He also relied in case of *Qualcomm Incorporated vs Asstt Director of Income-tax (ITA No. 3696 to 3702/Del/2009)*, wherein the Delhi Tribunal held that if there is cleavage of opinion amongst between High Courts and there being no decision of jurisdictional High Court on the issue, the view favourable to the assessee has to be adopted. The Delhi Tribunal held that in spite of Karnataka High Court decision in the case of *Ecom Gill Coffee Trading Private Limited*, which held that Tribunal did not allow extension of stay beyond 365 days, in view of judgment of *Ronuk Industries (supra)*, *Narang Overseas (supra)* and *Tata Communications (supra)*, the stay was granted beyond 365 days to the assessee. In the present case, the appeal is pending before the Tribunal and the same is scheduled for hearing. Further, the delay in disposing off the said appeal is on account of the fact that

similar issue is already pending for disposal before the Hon'ble Supreme Court of India in the case of Idea Cellular Limited and Bharti Cellular Limited. Therefore, he requested to extend the stay beyond 365 days. At the outset, the Id. CIT D.R. vehemently opposed and drawn out attention in case of *Ecom Gill Coffee Trading Private Limited (supra)* and argued that there is an outer limit of extension has been drawn in act itself. Further, the assessee's issue involved in the appeal, has already been held against the assessee by the various High Courts. Thus, the appeal may be decided on merit. The delay is attributed to the assessee on more than one occasion. He also relied upon *Dunlop India Ltd. 154/172 (SC)*, Hon'ble Supreme Court held as under:

"We have come across cases where the collection of public revenue has been seriously jeopardized and budgets of Governments and Local Authorities affirmatively prejudiced to the point of precariousness consequent upon interim orders made by courts. In fact, instances have come to our knowledge where Governments have been forced to explore further resources for raising revenue, source which they would rather well leave alone in the public interest, because of the stays granted by courts. We have come across cases where an entire service is left in a state of flutter and unrest because of interim orders passed by courts, leaving the work they are supposed to do in a state of suspended animation But since the law presumes that public authorities function properly and bonafide with due regard to the public interest, a court must be circumspect in granting interim orders of far reaching dimensions or orders causing administrative, burden-some inconvenience or orders preventing collection of public revenue for no better reason than that the parties have come to the court alleging prejudice, inconvenience or harm and that a prima fade

case has been shown. We consider that where matters of public revenue are concerned, it is of utmost importance to realize that interim orders ought not to be granted merely because a prima facie case has been shown. More is required. The balance of convenience must be clearly in favour of the making of an interim order and there should not be the slightest indication of a likelihood of prejudice to the public interest. We are very sorry to remark that these considerations have not been borne in mind by the High Court and an interim order of this magnitude had been granted for the mere asking, "unquote."

Therefore, he requested not to extend the stay further.

2. We have heard the rival contentions and perused the material before us. Undisputedly, the appellant is seeking extension of stay beyond 365 days. The appellant argued that on similar facts, the matter is pending before Hon'ble Supreme Court in case of Idea Cellular Limited and Bharti Cellular Limited, wherein ad interim order had been passed. The Hon'ble Bombay High Court in case of *CIT vs Ronuk Industries Ltd (supra)* has held that the Tribunal has power to extend the period of stay beyond 365 days u/s.254(2A), third proviso, even if the delay in disposing off the appeal is not attributable to the assessee, there may be several other reasons for not disposing of the appeal by the ITAT. The appellant paid 90% outstanding demand in A.Y. 08-09. Keeping in view of the legal position on this issue, we hereby stay the demand period of 180 days or till disposal of the appeal, subject to following conditions:

i. The appellant shall pay 90% demand for A.Y. 09-10, similar to A.Y. 08-09 by 31.01.2013.

ii. If the Hon'ble Supreme Court decides the case within stay period, the appellant should make a petition accordingly to start early hearing.

We grant the stay subject to above conditions.

3. In the result, the Stay Applications of the assessee stand allowed in the terms indicated above.

This Order pronounced in open Court on 11.01.2013

Sd/-
(D.K.Tyagi)
Judicial Member

Sd/-
(T.R. Meena)
Accountant Member

True Copy

S.K.Sinha

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी / Appellant
2. प्रत्यर्थी / Respondent
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद ।

Strengthen preparation & delivery of orders in the ITAT	
1) Date of taking dictation	04.01.2013
2) Direct dictation by Member straight on computer/laptop/dragon dictate	XXX
3) Date of typing & draft order place before Member	07.01.2012
4) Date of correction	” ”
5) Date of further correction	XXX
6) Date of initial sign by Members	11.01.2013
7) Order uploaded on	” ”
8) Original dictation pad has been enclosed in this file	Yes
9) Final order and 2nd copy send to Bench Clerk on	11.01.2013