

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
O. O. C. J.

WRIT PETITIOIN (LODG.) NO.684 OF 2010

Paramount Health Services (TPA) Pvt. Ltd.  
and others

..Petitioners.

Vs.

Assistant Commissioner of Income Tax  
and others

..Respondents.

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Mr. R.A. Dada, Senior Advocate with Mr. J.D. Mistry, Mr. Jiten Jain  
and Mr. Rahul Jain i/b Res Legal for the Petitioners.

Mr. Suresh Kumar for Respondents 1, 2 and 16.

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**CORAM : DR.D.Y.CHANDRACHUD &  
J.P.DEVADHAR, JJ.**

25<sup>th</sup> March, 2010.

**P.C. :**

1. With the consent of counsel appearing on behalf of the Petitioners and counsel appearing on behalf of the First, Second and Sixteenth Respondents (The Assistant Commissioner of Income Tax (TDS)- 2(2), Commissioner of Income Tax TDS and Union of India respectively) the Petition is taken up on Board for admission and is called out for hearing. Rule, with the consent of Counsel, made returnable forthwith.

2. On the request of counsel appearing on behalf of the Petitioners, leave granted to delete Respondent Nos.3 to 15.

3. The First Petitioner is engaged in the business of acting as a third party administrator for processing claims of policyholders insured by insurance companies. The Petitioner has instituted, on 10<sup>th</sup> October, 2009 a petition under Article 226 challenging the jurisdiction of the First and Second Respondents in calling upon the First Petitioner to deduct tax at source under Section 194-J of the Income Tax Act, 1961 on payments made to hospitals. The petition has now been posted for hearing and final disposal on 15<sup>th</sup> April, 2010. On 27<sup>th</sup> October, 2009 the First Respondent passed an order under Section 201(1) read with Section 201(1A) holding that the First Petitioner was liable to deduct tax at source under Section 194-J.

The following demands were raised by the First Respondent :

<u>Assessment Year</u>	<u>Demand (Rs. In Crores)</u>
2008-2009	31.55
2009-2010	19.82
2010-2011	7.69
	59.06

4. The Petitioner filed an appeal before the CIT (TDS) and moved an application for stay. On 8<sup>th</sup> December, 2009 the First Petitioner informed the First Respondent that a payment of Rs.35.35 lacs was made in pursuance of the aforesaid demand. On 30<sup>th</sup> December, 2009 the First Respondent rejected the application for stay and called upon the First Petitioner to pay an amount representing 50% of the demand. The First Petitioner thereupon filed an application for stay before the Second Respondent. On 18<sup>th</sup> January, 2010, 17<sup>th</sup> February, 2010 and 10<sup>th</sup> March, 2010 the First Petitioner informed the First Respondent about payments having been made, in the amount of Rs.1.59 Crores, Rs.1.47 Crores and Rs.1.34 Crores after the issuance of CBDT circular No.8 of 2009. The Petitioner has also stated that necessary steps were being taken for obtaining income tax returns/ auditor's certificates for the past period from the hospitals. On 22<sup>nd</sup> February, 2010 the First Petitioner filed a further communication with the First Respondent and furnished details of payments having been made as a result of which the demand would

stand reduced by Rs.42.23 Crores.

5. On 19<sup>th</sup> March, 2010 an order was passed by the Second Respondent by which the application for stay filed by the Petitioner was disposed of. The order passed records that out of a total demand of Rs.59.06 Crores, the interest component is Rs.8.74 Crores. The current demand for Assessment Year 2010-11 stands at Rs.7.69 Crores including an interest component of Rs.24.75 lacs. The order of the Second Respondent governs the application for stay for Assessment Years 2008-09, 2009-10 and 2010-11. By his order, the CIT (TDS) has directed that demands raised for Assessment Years prior to A.Y. 2010-11 need not be enforced for the time being and the assessee was allowed to submit relevant evidence before the Assessment Officer of the tax having been either paid by the hospitals or, as the case may be, of the exempt status of the hospitals. The current demand for Assessment Year 2010-11 has not been stayed. The Assessment Officer was directed to realize the current interest under Section 201-(1A) for Assessment Year 2010-11.

6. The grievance of the assessee before this Court in the present proceedings is that despite the order of stay that was passed by the CIT (TDS) on 19<sup>th</sup> March, 2010, garnishee notices have been issued on 22<sup>nd</sup> March, 2010 for the entire amount of Rs.59.06 Crores.

7. There is merit in the grievance which has been urged on behalf of the assessee that in issuing the garnishee notices, the Assistant Commissioner of Income Tax (TDS) 2(2) has acted in defiance of the order of stay passed by the CIT(TDS) on 19<sup>th</sup> March, 2010. Ex facie, as noted earlier, the CIT (TDS) has stayed the enforcement of the demands for Assessment Years 2008-09 and 2009-10 as well as the demand towards interest. The order of the CIT (TDS) records that of the total demand of Rs.59.06 Crores the current demand was Rs.7.69 Crores for Assessment Year 2010-11. Despite the order of stay, garnishee notices have been issued for the entire amount which betrays a lack of application of mind.

8. That apart, it is also the grievance of the Petitioners that absolutely no reason has been set out in the impugned order for declining to stay the enforcement of the demand for Assessment Year 2010-11. Now a perusal of the order of the CIT(TDS) shows that he has rested his reasoning merely with the observation that the plea of the assessee is not acceptable and that the demands have to be realized forthwith for the current year. This cannot be even suggested to be a form of reasoning to sustain the rejection of the application for stay. In a decision of a Division Bench of this Court in **KEC International Limited v. B.R. Balakrishnan**<sup>1</sup>, parameters have been laid down to govern the manner in which applications for stay should be dealt with by adjudicating officers. Evidently, the CIT (TDS) is either ignorant of the law laid down by this Court or has acted in breach of the principles enunciated in the judgment. In either view of the matter, the entire approach of the CIT (TDS) is thoroughly misconceived. In **KEC International** (supra) the Division Bench noted that in a large number of matters this Court has been observing that orders are passed perfunctorily by the department

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<sup>1</sup> (2001) 251 ITR 158.

only with an idea of effecting recovery before March 31, though such orders could have been passed earlier in detail and after recording proper reasons. It was in this background that the Division Bench was constrained to lay down the parameters on the basis of which applications for stay should be dealt with. Evidently, the law laid down by the Division Bench has not led the authorities to act in compliance. This is an unfortunate state of affairs.

9. In these circumstances, the Petition will have to be disposed of and is accordingly disposed of in the following terms :

- i) The garnishee notices issued on 22<sup>nd</sup> March, 2010 (annexed as Exhibits A-1 to A-25) are set set aside;
- ii) The order dated 19<sup>th</sup> March, 2010 passed by the CIT (TDS) to the extent to which it declines to grant a stay of the enforcement of the demand for Assessment Year 2010-11 is set aside;
- iii) The CIT (TDS) is directed to pass a fresh order on the

application for stay of the demand in relation to Assessment Year 2010-11 after furnishing to the assessee an opportunity of being heard;

iv) It is ordinarily not necessary for this Court to observe that the authorities of the Revenue department of the Union Government must while passing orders of demand do so in accordance with law. However, having regard to the background of this case and recording, as we have done, the manner in which the CIT (TDS) has acted in this case, we specifically direct that the CIT (TDS) shall in passing an order afresh have due regard to the observations of this Court in the judgment of **KEC International** (supra) and the relevant provisions of law;

v) In the meantime, until fresh orders are passed, no coercive steps shall be taken towards realization of the demand for Assessment Year 2010-11.



Rule is made absolute in the aforesaid terms.

There shall be no order as to costs.

(Dr. D.Y.Chandrachud, J.)

(J.P. Devadhar, J.)