



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C). NO.24531/2005**

M/S. CINCOM SYSTEMS INDIA PVT. LTD. Appellant
Through : Mr. M.S. Syali, Sr.Adv. with Mr.Atul
Sharma & Mr.Ravi Verma, Advs.

versus

COMMISSIONER OF INCOME-TAX Respondent
Through : Mr. R.D. Jolly & Mr.Deepak Shukla,
Advs.

CORAM:
HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MR. JUSTICE B.N.CHATURVEDI

ORDER

% **20.12.2005**

Issue Rule. Mr.Jolly accepts notice on behalf of respondents and agrees to the final disposal of the writ petition at this stage itself.

The petitioner-assessee is engaged in the business of supplying softwares to Call Centers. Assessment for the assessment year 2002-2003, was completed by the Assessing Officer, in terms of an order dated 30th March, 2005, culminating in a demand of Rs.2.41 crores, towards income tax and interest due on the same. Aggrieved



by the said order, the petitioner-assessee has appealed to the Commissioner of Income-tax (Appeals), where the matter is presently pending consideration. An application, in the meantime, was filed by the petitioner before the Assessing Officer under Section 220(6) of the Income-tax Act, 1961 (for short 'the Act') for declaring that the petitioner-assessee is not in default. The said application was dismissed by the Assessing Officer on 13th October, 2005. The petitioner then approached the Additional Commissioner of Income-tax on the administrative side, who by an order dated 29th November, 2005, dismissed the same on the ground that the assessee had not appeared to pursue the prayer made before him. The assessee then next a revision before the Commissioner of Income-tax under Section 264 of the Act. The petitioner's case is that the said revision petition was summarily heard by the revisional authority on 14th December, 2005, when it was observed by the Commissioner that no stay as prayed for by the assessee was being granted and that the assessee ought to come up with a payment plan for payment of the outstanding dues.

Aggrieved by the said observations and the alleged failure of the revisional authority to hear and dispose of the revision



petition on merits, the petitioner-assessee filed writ petition No.23826/2005 in this Court, which was disposed of by this Court by order dated 19th December, 2005 with a direction to the respondent-Commissioner to hear and dispose of the revision petition within a period of two weeks from 26th December, 2005, when the petitioner was directed to appear before him for a personal hearing. The recovery of outstanding tax demand was pending disposal of the said revision petition stayed by this Court.

The present writ petition has now been filed by the petitioner, in which the petitioner-assessee has assailed the correctness of an order passed by the Commissioner of Income-tax on 16th December, 2005. The Commissioner has, by the said order, declined to stay the recovery of the outstanding dues but given to the petitioner the limited relief of paying the outstanding amount in five installments, payable on the dates mentioned in the said order. The Commissioner has held that the petitioner had not made out a case for the grant of any interim stay against the recovery of the amount held recoverable from him.

We have heard at considerable length Mr. Syall, counsel appearing for the petitioner and Mr. Jolly for the revenue. We have



also been taken through the orders passed by the Assessing Officer and that passed by the Commissioner under Section 264 of the Act. Several contentions have been urged on behalf of counsel appearing for the parties in support of their respective cases. We, however, consider it unnecessary to deal with the said submissions at length not only because the limited issue that falls for our consideration is whether any interim arrangement should be made in regard to the recovery of the tax amount, pending disposal of the appeal by the Commissioner but also because any observations that we may make are likely to prejudice one party or the other before the Commissioner, who is seized of the appeal against the assessment order. All that we need to mention is that the total demand raised against the petitioner is an amount of Rs.2.41 crores on account of dis-allowance of certain bad debts which the petitioner-assessee has written off. The Assessing Officer has declined to allow the deduction of the said debts, inter alia, on the ground that the parties from whom the said debts were recoverable were not traceable and that no steps for recovery of the amounts allegedly due from them had been taken. It is, however, common ground that no recoveries have, ever since the writing off of the debts, been made by the



petitioner from the companies from whom the said debts were recoverable. It is also common ground that the amounts written off by the assessee were offered for tax by the assessee for the previous year and that tax was duly paid on the same. The moot question that would, therefore, fall for consideration of the Appellate Commissioner would be whether the writing off of the bad debts was in the facts and circumstances of the case permissible as a deduction. In that view, therefore, the only consideration that ought to weigh with us is whether the interests of both the revenue and the assessee can be protected by an arrangement co-terminus with the disposal of the appeal by the Appellate Authority.

Mr.Syali submitted that while the petitioner would be prepared to offer 30% of the outstanding amount within such time as the Court may fix, the appeal could be directed to be disposed at an early date to prevent prejudice to the parties. Mr.Jolly, on the other hand, urged that the petitioner could be directed to deposit a minimum of Rs.50 lacs and the balance in instalments in which event the Commissioner could even be directed to dispose of the appeal finally by the end of January, 2006.

Having given our anxious consideration to the



submissions made at the bar and keeping in view the nature of the controversy as also the facts and the circumstances of the case, we are of the view that the following arrangement would sufficiently serve the ends of justice:

- (i) The petitioner-company shall deposit 50% of the amount of Rs.2,41,73,333/- mentioned in the demand notice dated 13th October, 2005 in the instalments of Rs.25 lacs per month;
- (ii) The first of the above instalments shall be payable in the first week of January, 2006 and every subsequent instalment to be paid in the first week of every succeeding month;
- (iii) Subject to the payment of the amounts as aforesaid the recovery of the balance 50% of the amount shall remain stayed, pending final disposal of the appeal by the Commissioner of Income-tax (Appeals);
- (iv) In the event of a default in the payment of the amount of any one of the instalments, as stipulated above, the entire amount of tax remaining due and recoverable from the petitioner on the date of the default shall



become payable in lump;

(v)The Commissioner of Income-tax (Appeals) shall expedite the hearing and disposal of the appeal to ensure that final orders on the same are passed by him within a period of six months from today;

(vi)The present arrangement shall remain in force only till such time the appeal is disposed of. Needless to say that the petitioner shall cooperate with the disposal of the appeal by the Commissioner.

(vii)The impugned orders passed by the Commissioner of Income-tax under Section 264 of the Act shall to the extent indicated above stand modified.

The Rule is made absolute and the writ petition disposed of on the above lines, leaving the parties to bear their own costs.

Order Dasti.


T.S. THAKUR, J


B.N. CHATURVEDI, J

DECEMBER 20, 2005

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