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

+ W.P.(C) 1535/2017, CM APPL. 6908/2017

SHANGHAI ELECTRIC GROUP CO. LTD. Petitioner

Through: Mr. Deepak Chopra and Ms. Manasvini
Bajpai, Advs.

Versus

DEPUTY COMMISSIONER OF INCOME TAX & ANR.

..... Respondent

Through: Mr. Dileep Shivpuri, Sr. St. Counsel and
Mr. Sanjay Kumar, Jr. St. Counsel and Mr.
Vikrant Ashok Maheshwari, Adv.

+ W.P.(C) 1544/2017, CM APPL. 6918/2017

SHANGHAI ELECTRIC GROUP CO. LTD Petitioner

Through: Mr. Deepak Chopra and Ms. Manasvini
Bajpai, Advs.

Versus

DEPUTY COMMISSIONER OF INCOME TAX, & ANR.

..... Respondent

Through: Mr. Dileep Shivpuri, Sr. St. Counsel and
Mr. Sanjay Kumar, Jr. St. Counsel and Mr. Vikrant
Ashok Maheshwari, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **20.02.2017**

1. Issue notice. Mr. Dileep Shivpuri accepts notice.
2. The petitioner's grievance is that its appeals before the Tribunal for previous Assessment Years (AYs) 2007-08 to 2011-12 are

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pending and that as a consequence of the orders of stay, no recovery proceedings were initiated. In these circumstances, when for AYs 2012-13 and 2013-14, the Assessing Officer (A.O.) proceeded according to the previous pattern and held that the petitioner was liable to taxation because it had a P.E. and proceeded to determine its liability, the same protection ought to be given during the pendency of this appeal. However, the Income Tax Appellate Tribunal (ITAT) by the impugned order dated 31.01.2017 *inter alia* observed as follows:

"5. Assessee for up to AY 2011-12 amounting in all to ₹92.33 crores stay has been granted by the coordinate bench unconditionally. We have also noted the history of stay granted in the case of the assessee for AY 2010-11. Originally the stay was granted to the assessee as stated in para No.2 of the order dated 30.01.2015, wherein it has been pleaded that appeal of the assessee for AY 2010-11 for which stay was granted has been disposed off and matter has been restored to the file of Assessing Officer vide order dated 05.09.2014. Now by the order dated 10.03.2016 stay for AY 2010-11 was once again granted. In the second round of proceedings for the above year the stand of the revenue remained unchanged. Therefore, it is apparent that the same matter has come back before the tribunal where the stand of the revenue remained unchanged. Starting from the year AY 2007-08 to 2011-12 the stay has been granted to the assessee without any pre-deposit. During the course of hearing a query was raised by the bench is that how the interest of revenue can be safeguarded if the issue is ultimately settled against the assessee as the assessee does not have



any permanent establishment or does not have any asset in India. This question remained unanswered but it was submitted that assessee is a multinational company carrying on many projects in India. The AR did not offer any sum as pre-deposit for stay of demand in dispute. Even otherwise, financial hardship or any evidence of coercive action from was not demonstrated. Therefore, looking to the interest of the revenue in the matter we are not inclined to grant stay in the present matter for above two years i.e. 2011-12 and 2012-13. In view of this we reject these stay petitions however in the interest of justice, we direct the registry to fix the hearing of above appeals for AY 2012-13 and 2013-14 on priority basis for hearing along with appeal for earlier years on 27.04.2017. We direct the parties to not to seek adjournment as substantial revenue is involved in these appeals.

We order accordingly.”

3. This Court heard the learned counsel for the parties. Between 12.01.2015 and 09.01.2017, the petitioner's appeal was listed on 21 occasions before the ITAT. Apparently, according to the record, the Bench did not function on four occasions and on other three occasions; the appeal could not be taken up on account of unscheduled public holiday and on the other 13 occasions, the revenue requested for adjournment.

4. Having regard to these developments and the state of the record, the Court is of the opinion that the ITAT should hear the parties and decide all appeals pertaining to the petitioner for AYs 2007-08 to 2013-14 at the earliest convenient date and deliver its final




orders latest by 31st May, 2017. In the meanwhile, the respondent shall maintain the status quo and shall not take coercive action.

5. The parties shall be present before the ITAT on 06.03.2017 which shall pass appropriate directions for further hearing of the appeal giving convenient bulk dates. The order shall be communicated *dasti* directly to the Registrar of the ITAT for appropriate action.

6. The writ petitions are disposed off in the above terms.

7. Order *dasti* to the parties, under the signature of the Court Master.


S. RAVINDRA BHAT, J


NAJMI WAZIRI, J

FEBRUARY 20, 2017/acm