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

\+ W.P.(C) 4790/2018 & CM APPL. 24395/2018

TATA TELESERVICES LIMITED ..... Petitioner
Through: Mr. Kamal Sawhney and Mr. Sparsh Bhargava, Advocates.

versus

THE PRINCIPAL COMMISSIONER
OF INCOME TAX & ANR. ..... Respondents
Through: Mr. Shailendera Singh, Advocate.

WITH

\+ W.P.(C) 4791/2018 & CM APPL. 24403/2018

TATA TELESERVICES LTD. ..... Petitioner
Through: Mr. Kamal Sawhney and Mr. Sparsh Bhargava, Advocates.

versus

THE PRINCIPAL COMMISSIONER
OF INCOME TAX & ANR. ..... Respondents
Through: Mr. Shailendera Singh, Advocate.

WITH

\+ W.P.(C) 4792/2018 & CM APPL. 24797/2018

TATA TELESERVICES LIMITED ..... Petitioner
Through: Mr. Kamal Sawhney and Mr. Sparsh Bhargava, Advocates.

versus

THE PRINCIPAL COMMISSIONER
OF INCOME TAX & ANR. ..... Respondents
Through: Mr. Shailendera Singh, Advocate.

WITH

\+ W.P.(C) 4948/2018 & CM APPL. 24796/2018

TATA TELESERVICES LIMITED ..... Petitioner
Through: Mr. Kamal Sawhney and Mr. Sparsh Bhargava, Advocates.

versus

THE PRINCIPAL COMMISSIONER
OF INCOME TAX & ANR. ..... Respondents
Through: Mr. Shailendera Singh, Advocate.

AND

\+ W.P.(C) 4949/2018 & CM APPL. 24396/2018

TATA TELESERVICES LTD. ..... Petitioner
Through: Mr. Kamal Sawhney and Mr. Sparsh Bhargava, Advocates.

versus

THE PRINCIPAL COMMISSIONER
OF INCOME TAX & ANR. ..... Respondents
Through: Mr. Shailendera Singh, Advocate.

% Date of Decision: 19th November, 2020

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

MANMOHAN, J (Oral):

1. The petitions have been heard by way of video conferencing.

2. Present writ petitions have been filed challenging orders issued by respondents whereby the penalty demand of Rs.293,28,50,153/- for the assessment years 2006-07, 2007-08, 2008-09, 2009-10 and 2010-11 were stayed subject to payment of 20% of the said amount. Petitioner also sought to restrain the respondents from initiating recovery of any demand of penalty imposed on the petitioner for the relevant assessment years.

3. On 01st June, 2018, this Court had passed the following order:-

> *"Learned counsel for the petitioner submits that the quantum appeal is still pending before the Income Tax Appellate Tribunal. Secondly, the additions made in the assessment proceedings subject matter of the penalty orders are debatable. Primary addition relates to the expenditure incurred, which has been treated as capital expenditure. He has relied on the judgment of the Supreme Court in* ***Commissioner of Income Tax, Ahmedabad v. Reliance Petroproducts (P) Ltd., [2010] 189 Taxman 322 (SC)****. The petitioner/assessee, it is stated, is a loss-making company and directions passed to pay 20% of the penalty in instalments would have grave and serious consequences, as early decisions and adjudication is not in the hands of the petitioner alone.*
>
> *Subject to the petitioner depositing Rs.I0,00,00,000/- in two equal instalments of Rs.5,00,00,000/- on or before 29th June, 2018 and 31st July, 2018, respectively, there would be stay of recovery by coercive steps till the next date of hearing. The deposit would be made with the Income Tax Department. We clarify that the application for stay has not been decided, and remains pending.*
>
> *Relist on 11th September, 2018.*
>
> *Pendency of this writ petition would not be a ground to*

seek the adjournments before Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal in the proceedings pending before them. It will be open for the petitioner and the Revenue to make a request for early disposal of the proceedings.

Dasti under signature of the Court Master."

4. In pursuance to the aforesaid order, the petitioner deposited Rs.10 crores with the Income Tax Department.

5. Learned counsel for the petitioner points out that during the pendency of the present proceedings and subsequent to the order dated 01st June, 2018, the entire penalty amounts for assessment years 2009-10, 2010-11 and 2011-12 have been dropped and consequential appeal effect orders have been passed.

6. He states that what remains before the Commissioner of Income Tax (Appeals) is the appeals for AY 2006-07, 2007-08 and 2008-09 and the total cumulative penalty amount for these years is Rs.8,55,17,078/- and 20% of the same works out to Rs.1,71,03,416/- only. He emphasizes that in view of the aforesaid development, the balance amount i.e. Rs.8,28,96,584/- should be refunded to the petitioner.

7. Learned counsel for the respondents states that the appeals on merit (quantum) are pending before the ITAT and if the same is decided in favour of the Revenue, demand would once again arise.

8. He further admits that the penalty of Rs.72,87,99,676/- imposed with respect to the assessment year 2011-12 vide order dated 31st March, 2019 has been deleted vide order dated 05th February, 2020 passed by the Commissioner of Income Tax (Appeals).

9. Having heard learned counsel for the parties, this Court is of the opinion that even if the present writ petition(s) are dismissed at this stage, the maximum amount that the petitioners can be directed to deposit pursuant to the impugned orders and circulars issued by the CBDT would be 20% of the remaining demand which can only be Rs.1,71,03,416/-.

10. Keeping in view the aforesaid factual scenario, this Court is of the view that there is no reasonable ground for the revenue to hold the excess amount i.e. Rs.8,28,96,584/- and the same is directed to be released to the petitioners within four weeks.

11. With the aforesaid directions, present writ petitions and pending applications stand disposed of.

12. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

SANJEEV NARULA, J

NOVEMBER 17, 2020
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