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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **W.P.(C) 5184/2016**

UNITECH WIRELESS (TAMIL NADU) PRIVATE LIMITED ..... Petitioner

Through: Mr M. S. Syali, Senior Advocate with Mr Mayank Nagi, Advocate.

versus

COMMISSIONER OF INCOME-TAX (TDS) - 2 & ORS. ..... Respondent

Through: Mr Rahul Kaushik, Senior Standing counsel.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R

% **30.05.2016**

CM No.21559/2016

1. Allowed, subject to all just exceptions.

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2. Two factors have weighed with the Court to require Respondent No.1,. i.e., the Commissioner of Income Tax (CIT) (TDS)-2 to reconsider the matter concerning the stay of the demand raised against the Petitioner for Assessment Year ('AY') 2013-14.

3. One factor is that in relation to the demand for AY 2013-14, as in respect

of the demands from AYs 2010-11 onwards, the Petitioner already deposited 40% of the demand. The second factor is that refund in the aggregate sum of Rs.173.49 crores is said to be due to the Petitioner from AY 2009-10 till AY 2015-16.

3A. The Court is unable to find a mention of either of the above factors in the impugned order dated 8th April, 2016 passed by the CIT (TDS)-2.

4. In addition, Mr M S Syali, learned Senior counsel appearing for the Petitioner, refers to the decision of the High Court of Andhra Pradesh in ***Vodafone South Ltd. v. Deputy Commissioner, TDS Circle-2(1) (2016) 66 taxmann.com 15 (AP)*** where, after noting that the substantive issue was pending consideration by the Supreme Court, the High Court stayed the demand subject to the Assessee depositing 40% of the demand. The said decision will also be taken into consideration by the CIT (TDS)-2 while considering the matter afresh.

5. For the above reasons, the impugned order dated 8th April 2016 passed by the CIT (TDS)-2 is set aside and the matter concerning the stay of the demand raised by the letter dated 10th March, 2016 is restored to the file of the CIT (TDS)-2 for consideration afresh. The Petitioner is directed to

appear before the CIT (TDS)-2 on 13th June, 2016. Till such time the CIT (TDS)-2 does not pass the fresh order in terms of this order, no coercive steps shall be taken against the Petitioner.

6. The petition is disposed of in the above terms. Order *dasti.*

S.MURALIDHAR, J

VIBHU BAKHRU, J

MAY 30, 2016
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