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

\+ **W.P.(C) 6317/2016 & CM APPL. 25930/2016**

VODAFONE MOBILE SERVICES LIMITED ..... Petitioner

Through Mr. Kavin Gulati, Senior Advocate with Ms. Aakanksh Munjhal, Mr. Utsav Trivedi, Mr. Rohit Sthalekar and Mr. Milinda Sharma, Advocates

Versus

THE COMMISSIONER OF INCOME TAX (TDS)-2& ORS & ANR. ..... Respondents

Through Mr. Rahul Kaushik, Senior Standing Counsel for Income Tax with Mr. Dinesh Kumar, Advocate for respondents 1 & 2.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE NAJMI WAZIRI

O R D E R

% **22.07.2016**

CM No. 25931/2016 (Exemption)

1. Allowed, subject to all just exceptions.

W.P.(C) 6317/2016 & CM No. 25930/2016

2. This petition challenges an order dated 29th June, 2016 passed by the Commissioner of Income Tax (TDS) -2 ['CIT (TDS)'] rejecting the revision petition filed by the Petitioner under Section 264 of the Income Tax Act, 1961 ('the Act') against the rejection by the Assessing Officer ('AO') of the stay application filed by the Petitioner against a tax demand of Rs.7,57,50,048/- vide order dated

31st March, 2015 under Section 201(1) read with Section 201 (1A) of the Act.

3. After noticing the contention of the Petitioner as regards the amounts paid by it against similar demands for the Financial Years ('FY') 2006-2007 to FY 2011-12, the CIT (TDS) observed that as far as the demand for the Assessment Year ('AY') 2013-14 was concerned, no amount had been paid by the Petitioner. In the circumstances, the CIT (TDS) found no reason to interfere with the order of the AO declining stay of the demand.

4. Mr. Kavin Gulati, learned Senior counsel appearing for the Petitioner, referred to the decision of this Court in ***Nokia Corporation v. DIT (International Taxation) (2007) 292 ITR 22 (Delhi)*** as well as of the Andhra Pradesh High Court in the Petitioner's own case in ***Vodafone South Ltd.(Formerly known as Vodafone Essar South) v. DCIT, TDS Circle 2(1)*** (order dated 14th September 2015 in Writ Petition No. 27670/2015) to urge that the demand itself was not justified in law and that there was no justification in declining the stay, even in part by requiring the petitioner to deposit some portion of the demand.

5. From the details submitted to the Court, it appears that from FY 2006-07 to FY 2010-11, the petitioner had paid 100% of the demand pending adjudication and for the FY 2011-12 it has paid 73% of the demand. As far as FY 2012-13 (corresponding to AY 2013-14) is

concerned, the CIT (TDS) is right that no part of the demand has been paid.

6. It is not the case of the Petitioner that it is in some financial difficulty in paying the sum of around Rs. 7.58 crores which is obviously subject to the outcome of the adjudication. As far as its contention on merits, the Petitioner will have a full opportunity to substantiate its case during adjudication. The Court need not comment on the merits at this stage. Considering the quantum of the demand, and with no particular demonstrable prejudice to the Petitioner being shown, the Court is not inclined to interfere with the impugned order of the CIT (TDS) in exercise of its jurisdiction under Article 226 of the Constitution.

7. The writ petition and the application are dismissed.

S.MURALIDHAR, J

NAJMI WAZIRI, J

JULY 22, 2016
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