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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.399 OF 2017
IN
INCOME TAX APPEAL NO.1629 OF 2016

M/s. LG Asian Plus Limited ..Applicant
In the matter between
The Commissioner of Income Tax(IT)-3 ..Appellant
Versus
M/s. LG Asian Plus Limited ..Respondent

....
Mr. Nishant Thakkar i/b. PDS Legal for the Applicant-respondent.
Mr. Tejveer Singh for the Appellant.
....

CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.

DATE : 10th MARCH, 2017

P.C.

1. This Notice of Motion has been taken out by the applicant-respondent seeking:

(a) admission of the appeal filed by the Revenue from the order dated 31st July, 2015 passed by the Income Tax Appellate Tribunal (ITAT) relating to the Assessment Years 2007-08; and

(b) permission to deposit/pay the amount of tax i.e. Rs.4,79,27,609/- along with interest @ Rs.2,89,50,959/- aggregating to Rs.7,68,78,569/- which may become payable in case the questions of law raised in the appeal by the Revenue for Assessment Year 2007-08 are answered against the assessee.

2. Mr. Thakkar, the learned counsel appearing for the applicant-assessee, at this stage, does not press the prayer (a) above i.e. admission of the Revenue's appeal. However, he seeks to deposit/pay the aforesaid amount of Rs.7,68,78,569/- to the Revenue. It is submitted that the above deposit would safeguard the Revenue's interest in case the appeal of the Revenue is decided in its favour and so far the applicant is concerned, the interest on the principal amount of Rs.4.79 crores would stop running. All that applicant seeks is that in case the appeal of the Revenue is dismissed and no appeal and/or stay is obtained from Appeal Court within 90 days of filing the appeal, the aforesaid amount be returned along with interest thereon.

3. Mr. Tejveer Singh, the learned counsel appearing for the Revenue, on instructions of Mr.Jyotish Mohan, the Deputy Commissioner of Income Tax, states that the Revenue has no objection on the applicant-respondent depositing the aggregate amount of Rs.7,68,78,569/- with the Revenue i.e. the likely demand payable in case the Revenue succeeds in its appeal before us.

4. Therefore, in case the appellant-revenue's appeal is dismissed and or the questions are answered adverse to the Revenue then the Revenue

should refund the amount of Rs.7,68,78,569/- along with interest thereon. However this amount would become refundable along with interest, if the order of this Court adverse to the Revenue is not challenged before the Apex Court within the stipulated time or when filed, no stay is obtained within a period of four weeks after the expiry of 90 days to file an appeal from the order of this Court to the Supreme Court.

5. In the above view, Motion is allowed in the aforesaid terms.

(A. K. MENON, J.) **(M. S. SANKLECHA, J.)**