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

\+ **W.P.(C) 9200/2017 & CM APPL. 37634/2017**

TURNER INTERNATIONAL INDIA PVT. LTD. ..... Petitioner
Through: Mr. M.S.Syali, Senior Advocate with Mr.Mayank Nagi, Mr.Vikrant A. Maheshwari, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX ..... Respondent
Through: Mr. Asheesh Jain, Senior Standing Counsel for the Income Tax Department.

CORAM: JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH

<u>O R D E R</u>

% **17.10.2017**

1. The challenge in the present writ petition by the Petitioner Assessee is to an order dated 10th October 2017 passed by the Income Tax Appellate Tribunal ('ITAT'), whereby the stay earlier granted by the ITAT by an order dated 4th August 2017 for a period of 6 months during the pendency of the Petitioner's Appeal being ITA No. 218/Del/2017 for the Assessment Year ('AY') 2012-13 stood vacated.

2. The order dated 4th August 2017 of the ITAT, passed after hearing both the Petitioner Assessee as well as the Respondent-Revenue, reads as under:

> "By means of the present stay application, the assessee seeks extension of the stay of outstanding demand granted by the Tribunal vide its order dated 03.02.2017, in relation to the assessment year 2012-13.

> 2. The ld. AR submitted that the conditions stipulated, while granting original stay, were duly compiled with and the delay in disposing of the appeal has not occurred due to the assessee. It was, therefore, prayed that the stay hitherto granted may be extended. The ld. DR opposed the extension of stay.
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> 3. We have heard the parties and perused the relevant material on record. It is indisputably found that the terms of stay have been duly compiled with. The appeal could not be finally heard for one reason or the other, but for no fault of the assessee. Considering the entirety of the facts and circumstances of the instant case, we are inclined to grant extension of stay for a further period of six months from today or till the disposal of the appeal, whichever is earlier.
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> 4. In the result, the stay application is allowed."

3. It is pointed out that the appeal filed by the Petitioner was listed for hearing before the ITAT on 10th October 2017. On that date, the learned Authorised Representative ('AR') of the Petitioner was not in the country and a request was made that the appeal be adjourned to the immediate following day. The ITAT records in the impugned order that, "the Ld. DR however is insisting on either going ahead with the hearing or vacating the stay". In the circumstances, the ITAT was of the view that "we have no option but to vacate the stay".

4. The discretion whether an order of stay should be vacated is definitely available with the ITAT but such discretion should be exercised judicially. Given the above background when as recently as on 4th August 2017, the ITAT thought it fit to extend the stay "for a further period of six months

from today or till the disposal of the appeal, whichever is earlier", the appeal not having been being disposed of, the ITAT was under no compulsion to immediately vacate the stay only because a request for an adjournment by one day was made by the AR of the Petitioner. The appeal, which is now listed for hearing before the ITAT on 20th November 2017, could have been either advanced to an earlier date or it made clear that there would be no further adjournment on that date.

5. Mr. Syali, the learned Senior Counsel appearing for the Petitioner assures the Court that the Petitioner-Assessee will proceed with its appeal on 20th November 2017 without seeking any adjournment. In view of the above assurance, no further directions are called for in this regard.

6. In the circumstances, the Court sets aside the order dated 10th October 2017 passed by the ITAT and directs that the appeal of the Petitioner being ITA No. 218/Del/2017 be listed on 20th November 2017, the date already fixed by the ITAT. The interim order dated 4th August 2017 of the ITAT is restored.

7. The writ petition is allowed and the application is disposed of in the above terms.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

OCTOBER 17, 2017/j