IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 389 OF 2018

Vodafone m-Pesa Ltd. .. Petitioner

v/s.

The Deputy Commissioner of Income Tax and Anr. .. Respondents

Mr. Percy Pardiwala, Senior Counsel with Ms. Fereshte Sethna, Mr. Adhiraj Malhotra i/b DMD Advocates for the petitioner

Mr. N.C. Mohanty for the respondent

CORAM : M.S. SANKLECHA &
RIYAZ I. CHAGLA J.J.

DATED : 16th FEBRUARY, 2018.

P.C.

1. On 9th February, 2018, we passed the following order :-

“1. None appears for the Respondent despite service. Mr. Pardiwala, the learned senior counsel appearing for the Petitioner undertakes to file the Affidavit of Service by 13th February 2018.

2. This Petition challenges an order dated 29th January 2018 passed by the Respondent No.1, Deputy Commissioner of Income Tax. By the impugned order dated 29th January 2018, the Petitioner's application for stay for recovery of the demand made by the assessment order dated 21st December 2017 till the disposal of its Appeal by the Commissioner of Income Tax

(Appeal) (CIT(A) was rejected. The impugned order also threatens coercive recovery, if the demands are not paid on or before 5th February 2018.

3. The impugned order dated 29th January 2018 has rejected the Petitioner's application for stay made under Section 220(6) of the Act without considering and dealing with the Petitioner's application for stay dated 25th January 2018. This much less in the context of the parameters laid down by this Court in the case of ***KEC International Ltd. Vs. B.R. Balakrishnan & Ors.*** *to dispose of the stay application.*

4. *Mr. Pardiwala, the learned senior counsel for the Petitioner states that in terms of the Circular dated 29th February 2016 issued by the Central Board of Direct Taxes ("CBDT") the Petitioner would approach the Commissioner of Income Tax in his administrative capacity for stay in terms of Section 260(6) of the Act.*

5. *In the above view, the impugned order dated 29th January 2018 directing the Petitioner to pay the amount confirmed by the order dated 21st December 2017 on or before 5th February 2018 is stayed. This stay is subject to the Petitioner filing its stay application to the Commissioner of Income Tax on or before 14th February 2018.*

6. Writ Petition is adjourned to 16th February 2018. In the meantime, there shall be an ad-interim stay to the impugned order dated 29th January 2018 of the Respondent No.1 – Deputy Commissioner of Income Tax.

7. Stand over to 16th February 2018."

2. Mr. Pardiwala, learned Senior Counsel appearing for the petitioner states that in terms of the above order, they have filed an application to the Commissioner of Income Tax. The application seek a stay of recovery of demand payable, consequent to the order dated 29th December, 2018 till the disposal of the appeal by the Commissioner of Income Tax (Appeals). All he now seeks is a direction to restrain the Assessing Officer from acting upon his order dated 29th January, 2018 till the disposal of its application by the Commissioner of Income Tax.

3. The apprehension on the part of the petitioner that the Assessing Officer will adopt coercive proceeding pending disposal of its application is not warranted as this Court in numerous cases has held that no coercive proceedings to be adopted till the disposal of the stay application. Nevertheless, to allay the fear of the petitioner, we direct that the Assessing Officer will not adopt any coercive proceedings till such time as the Commissioner of Income Tax disposes of the petitioner's application for stay dated 14th February, 2018.

4. The petition is disposed of in the above terms.

(RIYAZ I. CHAGLA, J.) **(M.S. SANKLECHA, J.)**