

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA-118-2018 (O&M)

Date of Decision: 31.7.2018

The Principal Commissioner of Income Tax, Gurgaon

...Appellant.

Versus

Comverse Network Systems India Pvt. Ltd., Gurgaon

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE AVNEESH JHINGAN.**

PRESENT: Mr. Tajender K. Joshi, Sr. Standing Counsel for the appellant.

AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short “the Act”) against the order dated 8.9.2017 (Annexure A-II) passed by the Income Tax Appellate Tribunal, Delhi Bench 1-2, New Delhi (hereinafter referred to as “the Tribunal”) in Stay Application No. 490/DEL/2017 in ITA No.6704/DEL/2015, claiming the following substantial questions of law:-

1. Whether the Hon'ble ITAT has acted in contravention of the Second Proviso of Section 254(2A) of the Income Tax Act, 1961, as the combined period of stay has exceeded 365 days?
2. Whether the order of the ITAT be treated as void ab initio in light of Third Proviso to Section 254 (2A) of the Income Tax Act, 1961, which provides

that stay of demand stands vacated after expiry of a period of 365 days, even if delay in disposal of appeal is not attributable to the assessee?

2. A few facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee-respondent filed its return of income on 24.11.2011 for the assessment year 2011-12 declaring income at ₹ 17,60,17,290/-. The case was selected for scrutiny and notice under Section 143(2) of the Act was issued. A reference was made to the Transfer Pricing Officer to determine the Arm's Length Price who vide order dated 29.1.2015 passed under Section 92CA(3) of the Act assessed Transfer Pricing Adjustments of ₹ 14,98,66,534/-. The Assessing Officer vide draft order dated 16.2.2015 assessed the total income of the assessee at ₹ 32,58,83,820/- by making addition of ₹ 14,98,66,534/- on account of Transfer Pricing Adjustments. Against the said order, the assessee approached the Dispute Resolution Panel who vide order dated 30.9.2015 restricted the Transfer Pricing Adjustment to ₹ 10,90,69,493/- by revising the earlier adjustment of ₹ 3,74,50,109/- in sales and post support segment to ₹ 2, 37,55,953/- and deleted the Transfer Pricing Adjustment on account of provision of software development services of ₹ 2,71,02,885/-. Thereafter, the Assessing Officer vide assessment order dated 30.11.2015 assessed the income of the assessee at ₹ 28,50,86,780/- and raised a demand of ₹ 7,43,96,230/-. Feeling aggrieved, the assessee filed an appeal before the Tribunal. The assessee had also filed rectification application before the Assessing Officer for credit of the prepaid taxes. The Assessing Officer allowed the said rectification application and reduced the demand from

adjusted and remaining balance demand of ₹ 4.06 crores was raised. Along with the appeal, the assessee also filed Stay Application No. 627/Del/2015. The stay was granted on 6.1.2016 till 9.2.2016 and further this stay was extended till 26.4.2016 or 180 days from the date of the order whichever expires early. Further, the stay was extended from time to time. Lastly the application was allowed and stay was extended for six months or till the disposal of the appeal whichever is earlier vide order dated 8.9.2017. According to the learned counsel, the decision of the Tribunal is not in accordance with law as it is contrary to the second and third provisos to Section 254(2A) of the Act. Hence, the present appeal.

3. We have heard learned counsel for the appellant-revenue.

4. The matter is no longer res integra. While interpreting the provisions of Section 35C(2A) of the Central Excise Act, 1944 which is pari materia to section 254(2A) of the Act, this Court in **STA No.15 of 2015 (Commissioner of Central Excise, Rohtak vs. M/s Voice Telesystem)** decided on 20.1.2016 after considering the relevant case law on the point concluded that wherever the appeal could not be decided by the Tribunal due to pressure of pendency of cases and delay in the disposal of the appeal is not attributable to the assessee in any manner, the interim protection can continue beyond 365 days in deserving cases. Reference was made to the judgment of the Apex Court in **Commissioner of Customs & Central Excise, Ahmedabad vs. Kumar Cotton Mills Pvt. Limited, (2005) 180 ELT 434**. Further, this Court in **ITA No.5 of 2016 (Principal Commissioner of Income Tax, Gurgaon v. Carrier Air Conditioning and Refrigeration Limited)** decided on 25.4.2016 and **ITA No.57 of 2016 (Principal**

Ltd., Hisar) decided on 9.5.2016, adjudicating identical issue interpreting Section 254(2A) of the Act following the judgment in **M/s Voice Telesystem's case (supra)** had held similar view.

5. Accordingly, we do not find any error in the impugned order passed by the Tribunal. Thus, no substantial question of law arises. The appeal stands dismissed.

(AJAY KUMAR MITTAL)
JUDGE

July 31, 2018
gbs

(AVNEESH JHINGAN)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes