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

\+ W.P.(C) 2732/2018 AND CM APPL. 11100/2018

M/S VODAFONE MOBILE SERVICES LTD. ..... Petitioner

Through: Mr. Balbir Singh, Sr. Adv. with Mr.Rohit Garg, Mr. Siddharth Joshi and Mr. Aarush Bhatia, Advs.

versus

ASST. COMMISSIONER OF INCOME-TAX & ANR.

..... Respondents

Through: Mr. Zoheb Hussain, Sr. Standing Counsel with Mr. Depak Anand, Jr. Standing Counsel and Mr. Arindam Mishra, ACIT, Circle 26(2), New Delhi.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

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

% **04.07.2018**

The writ petitioner seeks directions for the vacation of an attachment order issued by the respondent Income Tax Authorities under Section 281B of the Income Tax Act ('the Act').

For the various previous assessment years, the petitioner's right to claim refund in respect of the amount assessed finally after the outcome of its appeal and rectification proceedings arose. The total refunds were quantified at Rs.655.67 crores. The Assessing Officer (AO) issued 11 separate orders seeking attachment of various amounts towards likely demands for AY 2012-13 to 2014-15. The petitioner moved the AO under Section 281B of the Act volunteering to furnish a bank guarantee to cover the amount, if so attached and seeking the release of the amount. Claiming to be aggrieved by the inaction of the AO, the petitioner has approached this Court under Article 226/227 of the Constitution of India. The respondents in their counter affidavit point out that the bank guarantee furnished by the petitioner would expire on 28.08.2018 and that, having regard to the Transfer Pricing Adjustments (TPA) likely to be carried out for the concerned years, the guarantees must be kept alive till 31.03.2019. It is also besides that there is an impending merger and a proposed scheme of amalgamation between the petitioner and Idea Cellular which is likely to result in losses for the new entity which may besides not agree to honour the bank guarantee.

This Court is of the opinion that the petitioner should address the issue of validity of the bank guarantee and ensure that an appropriate substituted bank guarantee securing the amount of Rs.655.67 crores is made available to the AO, with the validity till 31.03.2019. Besides, the fresh bank guarantee or substituted bank guarantee should also very clearly spell out that not only the petitioner but also its successor or any other entity which succeed to its assets and liabilities on account of any scheme of amalgamation or merger would be bound to honour the bank guarantee in the event the demand is made by the beneficiary i.e. the Revenue. In the event of such substituted bank guarantee being furnished to the Revenue/AO, the latter shall pass an appropriate order accepting the same and also release the amounts attached, within a week of receiving of such bank guarantee.

The writ petition is disposed off in the above terms. Pending application also stands disposed off.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JULY 04, 2018/rc