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

**WRIT PETITION NO.443 OF 2018**

Vodafone India Limited … Petitioner
V/s.
Commissioner of Income-tax (TDS)-2 and ors. … Respondents
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Ms.Fereshte Sethna, Ms.Mrunal Parekh and Mr.Ameya Pant i/by DMD Advocates for the Petitioner.
Mr.Suresh Kumar for Respondent Nos.1 to 3.
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**CORAM : AKIL KURESHI AND**
**S.J.KATHAWALLA, JJ.**
**DATE : JUNE 03, 2019.**

**P.C.:-**

1. Leave to amend the cause title. Amendment to be carried out forthwith. Re-verification dispensed with.

2. Heard learned counsel for the parties for final disposal of the petition. The petitioner has approached the Court seeking protection against further recoveries arising out of as many as 17 separate assessment orders which are in appeal before the Appellate Commissioner. The petitioner had applied previously

stay to the Departmental Authorities, however, the Commissioner of Income Tax by his order dated 21st December, 2017 refused to grant any such protection, hence this petition. One of the main reasons cited by the said authority in the impugned order is that the recoveries would not cause undue financial hardship to the petitioner. By detailed interim order, Division Bench of this Court on 4th January, 2018 had granted protection to the petitioner in following terms:-

> “9. In the above circumstances, it would be in the interest of justice that pending consideration of this Petition and the Respondent – Revenue's response to it, that the following order is passed:
> (a) There shall be an ad-interim stay in terms of prayer clause (c) to the Petition i.e. Respondents are restrained from taking any coercive steps to recover the amount of Rs.43.79 Crores or any part thereof being the outstanding demands in respect of its Appeals pending before the Commissioner of Income Tax (Appeals) till the next date.
> (b) The Petitioners application to amend this Petition so as to bring on record better and further particulars in support of its case is allowed.
> (c) Amendment to be carried out on or before 5th January 2018 and a copy of the amended Petition will also be served upon the Respondents on or before 5th January 2018.
> (d) Liberty to the parties to apply.
> (e) Writ Petition is adjourned to 12th January 2018.”

3. Learned counsel for the petitioner pointed out that through different modes the Department has already made sizable recoveries out of the disputed tax demand, total of which comes to approximately 38.57 %. This is also borne out from the petitioner's averments in Paragraph 11 of the petition. The respondents have filed reply but not disputed this factual assertion.

4. Few things therefore emerge from record. Firstly, pending appeal the Department has recovered approximately 38% of disputed tax amount. Secondly, the appeals are pending since over 2 years by now and lastly, this Court has more than one year back passed interim order preventing the Department from carrying out further recoveries pending appeals. The Departmental circulars also envisage stay pending appeal before the Commissioner (Appeals), ordinarily upon deposit of 20% of the disputed tax. This requirement has also been fulfilled in the present case. No special circumstances are pointed out to us to permit the Department to carry out full recoveries. We further record, as stated by the counsel for the revenue that some of the

appeals are already decided by the Commissioner (Appeals) and also by the Income Tax Appellate Tribunal, which are in favour of the petitioner-assessee. That being the position, pending disposal of remaining appeals, we would not permit the Department to carry out any further recoveries.

5. Under the circumstances, the petition is disposed of with following directions:-

(i) There shall be no further recovery against the petitioner arising out of the concerned assessment orders till the pending appeals are decided.

(ii) The remaining appeals which are pending shall be disposed of preferably within 8 weeks from the date of receipt of this order.

6. Petition disposed of accordingly.

**(S.J.KATHAWALLA, J.)** **(AKIL KURESHI, J.)**

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