IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA-353-2018 (O&M)

Date of Decision: 8.3.2019

The Principal Commissioner of Income Tax, Gurgaon

....Appellant.

Versus

Carrier Air-conditioning and Refrigeration Ltd., Gurgaon

...Respondent.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.

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

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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 23.2.2018 (Annexure A-II) passed by the Income Tax Appellate Tribunal, Delhi Bench, Friday 1-T, New Delhi (hereinafter referred to as "the Tribunal") in ITA No. 1126/DEL/2014, for the assessment year 2009-2010, 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 been 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. The assessee had filed its return of income on 29.9.2009 for the assessment year 2009-10 declaring the income of ₹ 54,20,34,020/-. Its 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 26.11.2012 passed under Section 92CA(3) of the Act determined the Transfer Pricing Adjustment at ₹ 8,50,26,705/-. The Assessing Officer vide order dated 12.2.2013, framed a draft assessment order after making the addition of ₹ 8,50,26,705/- on account of Transfer Pricing Adjustments and disallowance of ₹ 5,51,000/- on account of amount spent towards lease hold improvement. Against the said order, the assessee moved before the Dispute Resolution Panel-III, New Delhi who vide order dated 26.11.2013 issued the directions under Section 144C(5) of the Act. In pursuance thereto, the Assessing Officer vide order dated 19.12.2013 (Annexure A-1) framed the final assessment at a total income of ₹ 62,26,72,260/- including addition of ₹ 7,56,79,236/- on account of Transfer Pricing Adjustments and net disallowance of ₹ 49,59,000/- qua the amount spent towards lease hold improvement. Accordingly, a demand of ₹ 4,23,82,230/- was raised, out of which the assessee had paid the demand of ₹ 2,93,43,800/- and ₹ 1,30,38,430/- remains as balance outstanding demand. Feeling aggrieved by the order, Annexure A-1, the assessee filed an appeal along with stay application before the Tribunal. The Tribunal vide order dated 6.6.2014 granted stay of demand for six months, i.e. from 6.6.2014 to 5.12.2015 or till the disposal of the appeal.

The assessee again filed an application for extension of stay and the Tribunal vide order dated 27.11.2014 further extended stay of demand for six months, i.e. upto 5.6.2015 or till the disposal of the appeal, whichever was earlier. Further, the Tribunal vide orders dated 12.6.2015 and 5.2.2016 further extended the stay for another period of six months or till the disposal of the appeal. Another period of 30 days or till the pronouncement of the order of the appeal was extended by the Tribunal vide order dated 5.8.2016. Thereafter, the Tribunal vide order dated 23.2.2018 (Annexure A-II), stay was extended for another period of six months or till the disposal of the appeal whichever was earlier. According to the revenue, the Tribunal has extended the stay beyond 365 days which is not permissible in law. Hence, the present appeal.

3. We have heard learned counsel for the revenue.

4. It was not disputed by the learned counsel for the appellant-revenue that the matter in issue is no longer *res integra* and stands concluded by the decision of this Court in **ITA-5-2016** decided on 25.4.2016 whereby identical question as claimed in the present appeal, has been held not to be substantial question of law.

5. For the reasons recorded in the aforementioned appeal, the present appeal is also dismissed.

(AJAY KUMAR MITTAL)
JUDGE

March 8, 2019
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned **Yes/No**

Whether Reportable **Yes/No**