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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 1327/2019, C.M. APPL.6030/2019**
B T GLOBAL COMMUNICATIONS INDIA PVT. LTD.

..... Petitioner
Through : Sh. Deepak Chopra, Sh. Amit
Shrivastava and Sh. Sheel Vardhan, Advocates.

versus

ADDITIONAL COMMISSIONER OF INCOME TAX & ANR.
..... Respondents
Through : Sh. Zoheb Hossain, Sr. Standing
Counsel.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER
% **13.02.2019**

Issue notice. Sh. Zoheb Hossain, Sr. Standing Counsel accepts notice.

With consent, the petition was heard finally.

The petitioner/assessee's grievance is with respect to the order made by the Assessing Officer (AO) on 28.01.2019, refusing to suspend the notice of demand which had directed payment of 20% of ₹1,91,09,95,928/- towards its tax liability assessed. The assessment in respect of Assessment Year (AY) 2015-16 in this case was completed on 27.12.2018; the AO held the petitioner liable for payment under Section 40(a)(i) of the *Income Tax Act, 1961* [hereafter "the Act"] on account of payments made to M/s British Telecommunication Plc on

the ground that it had not effected Tax Deducted at Source (TDS). In addition, the AO also disallowed the expenditure towards annual license fee and the deduction claimed under Section 80IA of the Act. The petitioner's appeal against the impugned order directing it to pay 20% of the tax demand is pending review.

Learned counsel for the Revenue contended that the petitioner has an alternative remedy, i.e. – in the form of revision under Section 264 of the Act and that in the given circumstances, this Court should not interfere with the order. The petitioner's application under Section 220(6) of the Act, seeking suspension of demand had stated that the royalty paid to M/s. British Telecommunication Plc to the tune of over ₹380 crores was not tax deductible and relied on *DIT v. New Skies Satellite BV* 2016 (382) ITR 114.

We notice that the AO relied upon the Madras High Court Division Bench in *Verizon Communications Singapore Pvt. Ltd. v. ITO* 361 ITR 575 which too was noticed and distinguished by this Court in *New Skies (supra)*. Strangely, the AO did not discuss the applicability of the Division Bench judgment of this Court. Learned counsel for the Revenue expressed reservation and stated that *New Skies (supra)* is distinguishable.

Prima facie, the Court is of the opinion that the ruling in *New Skies (supra)* applies to the facts of this case. Having considered the overall circumstances, the Court is of the opinion that the TDS liability towards royalty paid, the total amount of which is ₹380

crores should be excluded from the computation of 20% arrived at by the AO. Consequently, as an interim measure, before disposal of the appeal, the assessee shall deposit 20% of the balance amount. Any refund payable to the petitioner shall be adjusted from the outstanding liability. It is clarified that the views expressed are purely for the purpose of this proceeding and are not an expression on the merits of the petitioner's appeal before the CIT(A). The parties' contentions are reserved.

The writ petition is accordingly disposed of in the above terms along with the pending application.

Order *dasti*.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

FEBRUARY 13, 2019/AJK