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

\+ **W.P.(C) 4094/2019**

PR. COMMISSIONER OF INCOME TAX – 16 ..... Petitioner

Through Mr. Zoheb Hossain, Sr. Standing Counsel for Revenue.

versus

M/S DABUR INVEST CORP. ..... Respondent

Through Mr. M.P. Rastogi, Mr. K.N. Ahuja, Mr. Rohit Jain, Mr. Aniket D. Agrawal, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE ASHA MENON

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

% **30.05.2019**

1. The Revenue has filed this petition challenging an interim order dated 2nd January 2019 passed by the Income Tax Appellate Tribunal (ITAT) in Stay Application No. 984/Del/2018 arising out of ITA 8058/Del/2018 filed by the Respondent for Assessment Year (AY) 2015-16.

2. The principal ground on which the above order has been assailed by the Revenue is that:

> "On the date of hearing pursuant to which the impugned order was passed, the IT AT was apprised of the fact that the cases pertaining to A Y 2013-14 and 2014-15 were listed for hearing on 14.01.2019 to be heard on merits. In light of the same, the Hon'ble members opined that the present case i.e. A Y 2015-16 will also be fixed on 14.01.2019 and no stay was granted in the Courtroom on the date of hearing. However, in the order

> published by the Hon'ble ITAT pursuant to the abovementioned hearing, it was seen to the utter shock that a stay has been granted to the Respondent and moreover, the order stated that the same was pronounced in open Court which is not true in light of the proceedings of the Court on the date of hearing as explained above."

3. In light of the above averment, while directing notice to issue in this petition on 22nd April 2019, this Court passed the following order:

> "Issue notice to the respondent, returnable on 14.05.2019.
>
> The Registrar of the Delhi Bench of the ITAT shall ensure that the files in ITA 8058/Del/2018 containing all the relevant orders of the proceedings including the order sheets (listed before Delhi Bench 'B') are kept in a sealed cover and transmitted to this court two days before the next date of hearing.
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> The notice accompanied by a copy of this order shall be separately issued without process fee and transmitted to the Registrar of the ITAT to ensure compliance."

4. The Court has perused the original record sent to this Court by the Registry of the Income Tax Appellate Tribunal (ITAT). There are two folders. In one of them, there is a noting to the effect that there is dictation of an order on 2nd January, 2019 itself. The pages of the stenographer's note book containing the said dictation with the date of 2nd January, 2019 is available in the file.

5. There is another folder (orange cover) in which there is an endorsement of that the main appeal and "('stay ad')" is listed on 14th January, 2019. While Mr. Zoheb Hossain, learned Senior Standing Counsel for the

Petitioner/Revenue urges that this should be understood as the appeal with the stay application having been listed for 14th January 2019, considering the noting in the other file referred to above, it is not possible for this Court to come to any definite conclusion that the said stay application was not disposed of on 2nd January, 2019 by the impugned order under challenge in this petition before this Court. Mr. Rastogi, learned counsel for the Respondent Assessee maintains that the stay application was indeed disposed of on 2nd January 2019.

6. As far as the merits of the impugned stay order dated 2nd January, 2019 is concerned, two factors weighed with the Income Tax Appellate Tribunal (ITAT). One was that against a demand (including interest) of the Rs.1,11,61,79,720/-, the Assessee had already paid Rs.36 crores. The second was that the challenge by the Assessee to re-opening of the assessment for the earlier AYs i.e. 2013-2014 and 2014-2015 were also pending before the ITAT.

7. While factually it is correct that as against the tax amount of Rs.83,91,40,424/- (excluding the interest), the Assessee has paid Rs.36 crores, the Court is now informed that the appeals of the Assessee challenging the re-opening of the assessments for AYs 2013-2014 and 2014-2015 under Section 263 of the Act were allowed by the ITAT by order dated 11th March, 2019. The appeals of the Revenue against the said order of the ITAT are stated to be pending in this Court.

8. In the circumstances, the Court does not find any good ground to interfere

with the impugned order of the ITAT except to observe that the main appeal pending before it i.e. ITA No. 8058/Del/2018 for AY 2015-16 should now be heard on merits by the ITAT and disposed of at an early date.

9. In this regard, it is noticed that in the impugned order dated 2nd January 2019 itself, the ITAT had stated that no unnecessary adjournment would be sought by the Assessee. The Court finds from the order sheets that adjournments have been sought on several dates thereafter by the Revenue. It appears that a special counsel has appointed for the Revenue in the said appeal. Although the appeal was listed before the ITAT on 7th May, 2019 since the record was requisitioned by this Court, a further date of hearing could not be fixed.

10. The original record has been returned in Court to Mr. Vikram Dutt, Assistant Registrar, ITAT who is present. The Court directs that ITA 8058/Del/2018 be listed before the ITAT on 3rd June, 2019 at 10.30 am. The ITAT will endeavour, with the co-operation of counsel for the parties, to dispose of the appeal as expeditiously as possible.

11. The petition is disposed of in the above terms. Copy of the order be given *Dasti* under the signatures of Court Master.

S. MURALIDHAR, J.

ASHA MENON, J.

MAY 30, 2019
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