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

+ **ITA 916/2019**

THE PR. COMMISSIONER OF INCOME TAX -6

..... Appellant

Through: Mr. Ruchir Bhatia, Advocate.

versus

NOKIA SOLUTIONS & NETWORKS INDIA PVT. LTD.

..... Respondent

Through: Mr. Ankul Goyal, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
21.10.2019

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C.M. No. 46217/ 2019 and C.M. No. 46218/ 2019

Issue notice. Learned counsel for the respondent accepts notice. He fairly does not oppose the applications whereby the applicant seeks condonation of 21 days delay in filing of the appeal and 58 days delay in re-filing the appeal.

Accordingly, the applications are disposed of.

ITA 916/2019

The appellant has assailed the order dated 01.02.2019, passed by the Income Tax Appellate Tribunal (ITAT) in S.A. No. 68/ Del/2019 in I.T.A. No. 909/ DEL/2017 (A.Y. 2011-12), whereby the Tribunal has extended the

stay originally granted on 11.04.2016. The stay relates to outstanding demand of Rs. 1,08,95,83,260/-. The Tribunal has observed that the assessee is not responsible for the delay in disposal of the appeal and, therefore, the stay has been extended beyond the period of 365 days. So far as the jurisdiction of the Tribunal to extend the delay beyond the period of 365 days is concerned, this Court had the occasion to interpret the proviso to Section 254(2A) of the Income Tax Act, in *Pepsi Foods Co. Pvt. Ltd. v. Assistant Commissioner of Income Tax & Anr.*, 2015 376 ITR 87, held that the Tribunal is empowered to extend the stay even beyond the period of 365 days. Thus, no question of law arises for our consideration in the present appeal.

Learned counsel for the respondent has further pointed out that after the passing of the impugned order dated 01.02.2019, a further extension of stay was granted by the Tribunal on 26.07.2019, which has not been assailed.

Be that as it may, we are inclined to entertain the submission of Mr. Bhatia that in cases where there is stay of recovery of demand by the Tribunal, the Tribunal should deal with such cases on priority. He points out that, on the one hand, the assessee has obtained the stay of the outstanding demand while, on the other hand, it is pressing for refund of the amount due in respect of previous assessment years. He points out that the respondent's writ petition is pending before this Court and is listed on 21.01.2020.

We are of the considered view that in cases where there is stay of recovery of demand of tax, the Tribunal should deal with the appeals pending before it on a higher priority. The Tribunal should consider forming a separate list of such cases which should be heard on priority after

arranging the cases on the basis of their seniority as well as the quantum involved in the stay.

The appeal stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

SANJEEV NARULA, J

OCTOBER 21, 2019

N.Khanna