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

WRIT PETITION NO.3606 OF 2019

Vodafone Idea Limited … Petitioner
V/s.
The Income Tax Appellate
Tribunal and ors. … Respondents

Mr.P.J.Pardiwala, Senior Advocate i/by Mr.A.K.Jasani for the Petitioner.
Mr.Sham Walve with Mr.Pritesh Chatterjee, Advocate for Respondent Nos.1 to 3.

CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.
DATE : JANUARY 24, 2020

P.C.:-

1. Heard Mr.P.J.Paridwala, learned senior counsel instructed by Mr.A.K.Jasani, learned counsel for the petitioner; and Mr.Sham Walve, learned standing counsel, revenue for respondent Nos.1 to 3.

2. By filing this petition under Article 226 of the Constitution of India, petitioner has sought for the following reliefs:-

> "(a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India called for the records of the case so far as they relate to the impugned Order dated September 27, 2019 (Exhibit 'K') and order dated December 19, 2019 passed by ITAT in MA No.589/M/2019 Exhibit 'P' and after going through the same and examining the question of legality thereof modify the same by revoking the conditions of furnishing the bank guarantee imposed on the Petitioner earlier;
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> (b) that this Hon'ble Court may be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus, or any other appropriate writ, order or direction under Article 226 of the Constitution of India, ordering and directing the Respondent to revoke the conditions of furnishing the bank guarantee imposed on the Petitioner earlier;
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> (c) that this Hon'ble Court may be pleased to issue a writ of Prohibition or a writ in the nature of Prohibition or any other appropriate writ, order or direction under Article 226 of the Constitution of India prohibiting Respondent from taking any further action whatsoever in pursuance of the expiry of the bank guarantee."

3. It is seen that for the assessment year 2007-08, petitioner has preferred appeal before the Income Tax Appellate Tribunal, Mumbai Bench "D", Mumbai (Tribunal) which has been registered as ITA No.1173/CHD/2011.

4. In the said appeal petitioner had filed an application for staying the demand of Rs.93,03,55,486.00. The said application was registered as SA No.23/Chd/2011. It may be mentioned that as per the assessment order total income of the petitioner was assessed at Rs.7,43,66,88,318.00 and the tax demand was Rs.3,45,43,83,033.00. It appears that petitioner had paid an amount of Rs.2,17,08,29,467.00 excluding interest amount which amounts to 70% of the total tax amount. By order dated 14th December, 2011 Tribunal stayed recovery of the balance amount. However, at a subsequent stage, Tribunal insisted that petitioner should provide bank guarantee to cover the remaining 30% of the tax amount. This was in order dated 23rd November, 2012 passed in SA No.334/M/2012.

5. Learned counsel for the petitioner submits that for various reasons the banks of the petitioner are now insisting on full deposit of the aforesaid amount in order to provide bank guarantee. This has created a piquant

situation for the petitioner as it is going through a difficult financial phase at the moment.

6. Learned standing counsel Revenue submits that appeal of the petitioner is of the year 2011 and infact was fixed for hearing on several occasions. As a matter of fact it was heard but for one reason or the other hearing could not be concluded.

7. After hearing learned counsel for the parties and on due consideration, we are of the view that it would be in the interest of justice if the appeal itself is heard by the Tribunal expeditiously and till such time recovery of the balance tax amount should be stayed.

8. Accordingly, Tribunal is directed to hear and decide Income Tax Appeal No.1173/CHD/2011 for the assessment year 2007-08 within a period of four months from today. Till the hearing of the appeal as above, the demand in question shall be kept in abeyance without any requirement of furnishing bank account.

9. Writ petition is disposed of in the above terms.

(MILIND N. JADHAV, J.) **(UJJAL BHUYAN, J.)**

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