

**IN THE INCOME TAX APPELLATE TRIBUNAL “K” BENCH, MUMBAI
BEFORE MS. KAVITHA RAJAGOPAL, JM AND SMT. RENU JAUHRI, AM**

SA No.	Arising out of	Assessment Year
86/Mum/2024	ITA No.7454/Mum/2018	2014-15
88/Mum/2024	ITA No.1123/Mum/2022	2017-18
89/Mum/2024	ITA No.2290/Mum/2022	2018-19

**IN THE INCOME TAX APPELLATE TRIBUNAL “H” BENCH, MUMBAI
BEFORE MS. KAVITHA RAJAGOPAL, JM AND SMT. RENU JAUHRI, AM**

SA No.	Arising out of	Assessment Year
90/Mum/2024	ITA No.896/Mum/2023	2019-20

The Indian Hotels Company Limited Ninth Floor, Express Towers, Barrister Rajni Patel Marg, Nariman Point, Mumbai-400 021	Vs.	Dy. CIT, Circle-2(3)(1) Mumbai
PAN/GIR No. AAAC 3957 G		
(Assessee)	:	(Respondent)
Assessee by	:	Shri Nitesh Joshi & Ketan Ved
Respondent by	:	Ms. Rajeshwari Menon
Date of Hearing	:	23.08.2024
Date of Pronouncement	:	23.08.2024

ORDER

Per Kavitha Rajagopal, J M:

These stay applications are filed by the assessee/applicant seeking for stay of outstanding demand for Assessment Years ('A.Y.' for short) 2014-15, 2017-18, 2018-19 and 2019-20.

2. The facts of SA No.86/Mum/2022 arising out of ITA No7454/Mum/2018, pertaining to A.Y. 2014-15 may be set out as being illustrative of the facts in all the other stay applications before us, except for certain change in facts, for the sake of convenience.

3. Briefly stated the assessee/applicant is engaged in the business of hotel and catering wherein it owns and manages hotels in various metropolitan cities and tourist areas. The assessee/applicant had e-filed its return of income for the year under consideration and the return was selected for scrutiny and subsequent to the order of the learned Transfer Pricing Officer (ld. TPO for short), the draft assessment order dated 29.12.2017 was passed by the learned Assessing Officer (ld. A.O. for short) proposing various additions/disallowances. The assessee/applicant had filed its objection before the Hon'ble DRP and after duly disposing of the said objection, directions were issued by the Hon'ble DRP, pursuant to which, the final assessment order dated 30.10.2018 was passed by the ld. A.O. u/s. 143(3) r.w.s. 144C(13) of the Act, along with a notice of demand for a sum of Rs.145,80,77,410/- was issued. Subsequently, revisionary proceeding was initiated by the ld. PCIT u/s. 263 of the Act and in the consequential order u/s. 143(3) r.w.s. 263 of the Act, a demand of Rs.179,22,67,412/- was determined by the ld. A.O. The assessee/applicant was in appeal before the Tribunal, challenging the impugned order and the Tribunal vide order dated 12.04.2022 quashed the revisionary order u/s. 263 of the Act as being invalid in law.

4. The assessee was also in appeal before the Tribunal, challenging the original assessment order passed u/s. 143(3) r.w.s. 144C(13) of the Act for which the present stay application has been filed for stay of demand, arising out of the original assessment order.

5. The learned Authorised Representative (ld. AR for short) for the assessee/applicant contended that the assessee has a good case on the merits and that the delay in the disposal of the appeal was due to the revenue subsequent to the decision of

the Hon'ble Madras High Court in the case of *Roca Bathroom Products Pvt. Ltd.* (in decided in favour of the assessee and the same would be covered in the present assessee/applicant's case on the legal grounds, challenging the validity of the assessment order. The Id. AR further contended that the assessee was eligible for grant of stay as per the provisions of section 254(2A) of the Act where the assessee was due for a refund of Rs.69.57 crores, which was sought to be adjusted against the 20% of the outstanding revised/original demand, pertaining to A.Ys. 2014-15, 2017-18 to 2019-20. The Id. AR prayed for stay of demand.

6. The learned Departmental Representative (Id. DR for short), on the other hand, had nothing to controvert the fact that 20% mandatory requirement for granting stay could be adjusted with the refund due to the assessee, aggregating to Rs.69.57 crores and also the reason for the delay in disposing of the appeal was not attributable to the assessee.

7. We have heard the rival submissions and perused the materials available on record. It is observed that the aggregate demand from both the original demand as well as the revised demand for the four assessment years is calculated at Rs.362,09,66,202/- and the 20% payable for an order of stay as mandated u/s.254(2A) of the Act is Rs.72,41,93,240/-. The Id. AR for the assessee has given a working of the total refund that was due, subsequent to the quashing of section 263 proceeding and the payment which has already been made by the assessee/applicant, the same is tabulated below for ready reference:

AY	Original demand	Revised original demand (A)	o/s Demand (Rs.) (B)	20% Payable (C)=(A*20%)	Already paid (D)	Net Payable E=(C-D)	Remarks
2014-15	1,45,80,77,410	2,46,41,50,852	2,46,41,50,852	49,28,30,170		49,28,30,170	
2017-18	76,98,95,836	57,29,36,272	57,29,36,272	11,45,87,254	-	11,45,87,254	
2018-19	25,83,17,868	25,83,17,868	23,27,18,797	5,16,63,574	2,55,99,071	2,60,64,503	
2019-20	32,55,61,210	32,55,61,210	30,05,48,086	6,51,12,242	2,50,13,124	4,00,99,118	
Total demand	2,81,18,52,324	362,09,66,202	3,57,03,54,007	72,41,93,240	5,06,12,195	67,35,81,045	
<i>Less: Refund due to the assessee (Refund adjusted against the demand raised pursuant to an order under section 143(3) r.w.s. 263 – Now refundable due to quashing of the 263 order by the ITAT</i>						69,57,79,616	(without considering interest u/s.244A thereon)
Net Payable/(Refundable)						-2,21,98,571	

8. On perusal of the above, it is noticed that the condition stipulated as per the provision that the assessee should deposit not less than 20% of the amount of tax, interest, fee, penalty or any other sum payable under the provisions of the Act or to furnish security of equal amount has been satisfied in the present case. The Id. AR for the assessee/applicant also made a statement at the bar that the said refund amount of Rs.69,57,79,616/- was not adjusted against the demand for other assessment years other than the assessment years specified in the tabular column mentioned above and further post hearing furnished a copy of letter requesting the Id. A.O. to adjust the aforesaid refund along with the statutory interest u/s. 244A of the Act against the 20% demand. The Id. AR for the assessee/applicant also brought our attention to the order passed u/s. 220(3) of the Act dated 20.06.2022 where stay has been granted by the Id. A.O. and subsequently extended for a further period. The Id. A.O. vide order dated 05.07.2024 had rejected the extension of stay application stating the reason that only the Tribunal is the competent authority to grant stay when the appeal was pending before the Tribunal and the same has not been rejected on the merits. This infers that the assessee was entitled for grant of stay by the lower authorities in the earlier occasion also. Pertinently, the assessee

was also granted stay by the Tribunal for A.Ys. 2012-13 and 2016-17. We would like to place our reliance in the case of Hon'ble Apex Court in *ITO vs. M K Mohamamed Kunhi* [1969] 2 SCR 65 (SC), wherein it was held that when the Tribunal vide its power conferred u/s. 254 of the Act, can grant an order of stay where a strong *prima facie* case is made out in which case an order of stay can be granted by exercising its jurisdiction.

The relevant extract of the said decision is cited hereunder:

Section 255(5) of the Act does empower the Appellate Tribunal to regulate its own procedure, but it is very doubtful if the power of stay can be spelt out from that provision. In our opinion the Appellate Tribunal must be held to have the power to grant stay as incidental or ancillary to its appellate jurisdiction. This is particularly so when s. 220(6) deals expressly with a situation when an appeal is pending before the Appellate Assistant Commissioner, but the Act is silent in that behalf when an appeal is pending before the Appellate Tribunal. It could well be said that when s. 254 confers appellate jurisdiction, it impliedly grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution and that the statutory power carries with it the duty in proper cases to make such orders for staying proceedings as will prevent the appeal if successful from being rendered nugatory.

A certain apprehension may legitimately arise in the minds of the authorities administering the Act that if the Appellate Tribunals proceed to stay recovery of taxes or penalties payable by or imposed on the assesseees as a matter of course the revenue will be put to great loss because of the inordinate delay in the disposal of appeals by the Appellate Tribunals. It is needless to point out that the power of stay by the Tribunal is not likely to be exercised in a routine way or as a matter of course in view of the special nature of taxation and revenue laws. It will only be when a strong prima facie case is made out that the Tribunal will consider whether to stay the recovery proceedings and on what conditions and the stay will be granted in most deserving and appropriate cases where the Tribunal is satisfied that the entire purpose of the appeal will be frustrated or rendered nugatory by allowing the recovery proceedings to continue during the pendency of the appeal.

9. From the above, it is evidenced that the cardinal principles that has to be followed while granting stay in deserving cases along with other aspects such as balance of convenience whether in assessee's favour and irreparable loss would be caused to the assessee had the stay not been granted, is also to be considered. In the present case in hand, it was brought to our notice that various issues for which addition/disallowance has

been made was decided in favour of the assessee/applicant in other assessment years which also supports the assessee's contention.

10. For the above reasons and along with the fact that the interest of the Revenue will not be prejudiced as the delay in disposing of the appeal is not attributable to the assessee, we deem it fit to grant an order of stay, not exceeding 180 days from the date of this order or till the final disposal of the appeal, whichever is earlier.

11. In the result, all the stay applications filed by the assessee are allowed.

Order pronounced in the open court on 23.08.2024.

Sd/-
(Renu Jauhri)
Accountant Member

Sd/-
(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated : 23.08.2024

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai