

Turner General Entertainment Networks ... vs Income Tax Officer, Ward No. 76(1), New ... on 22 January, 2019

Author: S. Ravindra Bhat

Bench: S. Ravindra Bhat, Prateek Jalan

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 682/2019 & CM APPL.3018/2019
TURNER GENERAL ENTERTAINMENT
NETWORKS INDIA PVT. LTD. Petitioner
Through: Mr.Mayank Nagi, Advocate
versus
INCOME TAX OFFICER,
WARD NO. 76(1), NEW DELHI & ORS. Respondents
Through: Mr.Ashok Kumar Manchanda, Sr.Std.
Counsel

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

% 22.01.2019

1. Issue notice. Mr.Ashok Kumar Manchanda, Senior Standing Counsel accepts notice.

2. The petitioner's grievance is that its request for stay of demand [made for Assessment Year 2011-2012, regarding Financial Year 2010-2011], has not been considered on merits at all and that the concerned Assessing Officer (AO) has required the deposit of 20% of the demand as a pre-condition, for consideration of the application for exemption/stay of demand.

3. We have heard learned counsel for the parties. The instructions/office memorandum of the Central Board of Direct Taxes - Instruction No.1914 dated 02.12.1993 outlined the broad principles, which the Assessing officers and other authorities had to keep in mind while considering the applications for stay of demand. This was subsequently amended by CBDT Office Memorandum dated 29.02.2016 [F.No.404/72/93-ITCC]. The latter instructions of 2016 directs the concerned authorities to adhere to the following principles:

W.P.(C) 682/2019 page 1 of 4 "(A) In a case where the outstanding demand is disputed before CIT(A), the assessing officer shall grant stay of demand till disposal of first appeal on payment of 15% of the disputed demand, unless the case falls in the category discussed in para (B) hereunder.

(B) In a situation where,

(a) the assessing officer is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount higher than 15% is warranted (e.g. in a case where addition on the same issue has been confirmed by appellate authorities in earlier years or the decision of the Supreme Court or jurisdictional High Court is in favour of Revenue or addition is based on credible evidence collected in a search or survey operation, etc.) or,

(b) the assessing officer is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount lower than 15% is warranted (e.g. in a case where addition on the same issue has been deleted by appellate authorities in earlier years or the decision of the Supreme Court or jurisdictional High Court is in favour of the assessee, etc.), the assessing officer shall refer the matter to the administrative Pr.CIT/CIT, who after considering all relevant facts shall decide the quantum/proportion of demand to be paid by the assessee as lump sum payment for granting a stay of the balanced demand."

4. The figure of 15% mentioned has subsequently been increased to 20% by Office Memorandum [F.No.404/72/93-ITCC] dated 31.07.2017.

5. It is evident that the concerned authorities and tax officials have to apply their mind to decide an application for stay of demand. This does not, however, mean that any particular AO in a given case has to impose a per se condition that pending consideration of the application for stay of demand, W.P.(C) 682/2019 page 2 of 4 certain minimum amount has to be deposited.

6. In the present case, the impugned order reads as follows:

"To The Principal Officer M/s TurnerGeneral Entertainment Networks India Pvt. Ltd. 5th Floor, Radisson Commercial Plaza, National High Way No.8, Mahipalpur, New Delhi-110037.

Sir, Sub: - Stay Petition under Section 220(6) of the Income Tax Act, 1961 against the tax liability determined u/s 201(1)/101(1A) of the I.T. Act, 1961 for the F.Y. 2010-11 (A.Y. 2011-12) - reg.

Please refer to your application dated 04.05.2018 & letter dated 26.10.2018 for stay of demand amounting to Rs. 11,79,69,539/- determined u/s 201(1)/201(1A) of 1. T. Act, 1961 for F.Y. 2010-11(A.Y. 2011-12).

In this regard, it is intimated your application dated 04.05.2018 & your submission dated 26.10.2018 has been considered. Your request for keeping the demand in abeyance only till disposal of appeal by Ld.CIT(A), New Delhi cannot be accepted as you have failed to make payment of 20% of the disputed demand in accordance with CBDT 9Mdated 31:07.2017.

Therefore, your application for stay of demand of Rs.11,79,69,539/- is hereby rejected as you have failed to comply with the conditions laid down in CBDT OM dated

31.07.2017.

Yours Faithfully, (Rajendra Kumar Parmar) Income Tax Officer Ward-76(1), New Delhi."

7. This Court is of the opinion that the AO had to necessarily apply his/her W.P.(C) 682/2019 page 3 of 4 mind to the application for stay of demand and pass appropriate orders having regard to the extant directions and circulars including the memorandum of 29.02.2016. This in turn meant that AO could not have imposed a pre- condition of the kind that has been done in the impugned order. Consequently, the impugned order is hereby set aside. The AO shall consider the application for stay of demand made by the AO in its letter dated 04.05.2018 and pass necessary and appropriate orders, and exercise his discretion having regard to the facts and circumstances of the case, within three weeks from today.

8. In the meanwhile, the respondents are directed not to take any coercive action for enforcing the demands.

9. The writ petition is partly allowed to the above extent. No costs.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

JANUARY 22, 2019
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W.P. (C) 682/2019

page 4 of 4