

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 1937/2014

A. T. KEARNEY INDIA PVT. LTD. Petitioner

Through: Mr. Salil Kapoor with Mr. Ankit Gupta, Mr. Sanat Kapoor, Mr. Vikas Jain and Mr. S. Varun Gupta, Advocates.

versus

INCOME TAX OFFICER Respondent

Through: Mr. Sanjeev Sabharwal, Sr. Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.V.EASWAR

O R D E R

28.03.2014

The facts of this case are that the petitioner lost its appeal before the Commissioner of Income Tax (Appeal) on 20.11.2013. The revenue issued notice under Section 221 for determined demand amounts due for the AY 2007-08, which was subject matter of the appeal before the CIT (Appeals). In reply the petitioner concededly filed a letter on 11.02.2014 stating that it had preferred an appeal and stay application to the ITAT. The appeal along with the application for stay was taken up on 14.02.2014 when the Tribunal granted the stay in the following terms:-

”3. We have heard both the sides, considered the material on record and find undisputed fact that 50% of the remaining demand stands paid/ recovered by/ from the assessee for both the years which during the pendency of appeal, the assessee was asked to pay 50% of the demand.

Therefore, in view of the facts and circumstances of the case and material on record, we are of the view that it is a fit case where stay should be granted subject to the condition that assessee should not seek any adjournment and make its every effort to get the appeal concluded as and when fixed and considered for hearing. Therefore, we grant stay of demand for a period of 180 days/ till the disposal of the appeals, whichever is earlier and in case assessee seeks adjournment, accommodation herein granted shall stand vacated without any notice to the assessee.”

The petitioner's grievance in the above background of the circumstances is that despite the stay granted by the Tribunal the respondents attached and took away the proceeds of its bank account on 19.02.2014. Counsel for the revenue contends that there was no intimation about the stay and that the concerned assessing officer was not present when the Tribunal granted the stay; it was also stated that besides the mere filing of the appeal did not entitle the petitioner to contend that the respondent is barred from proceeding to recover the tax paid.

As is evident from the above discussion, the petitioner's application for stay was granted and the interim order was made for the period of 180 days. On 14.02.2014, we notice that the income tax authorities were represented by Mr. Yogesh Verma, CIT-DR, before the Tribunal. The order on the stay application was also pronounced in open Court on that date.

In these circumstances, the submission of the revenue that the concerned assessing officer was not intimated, cannot be accepted. If such an argument was made before this Court, where orders are pronounced in Court in the presence of counsel, it would certainly not be accepted, and in fact would be seriously viewed. In the facts of this case, it clearly amounts to overreach of the interim order of the Tribunal; in a similar situation, this Court itself would possibly be initiating contempt proceedings. In these circumstances, the Court is of the opinion that the respondent should lift the attachment and ensure that the amounts recovered are deposited back in the petitioner's account within a week from today.

The writ petition is allowed in terms of the above directions.

A copy of the present order shall be marked to the Central Board of Direct Taxes separately and communicated.

Order dasti.

S. RAVINDRA BHAT, J
R.V.EASWAR, J

MARCH 28, 2014