

आयकर अपीलीय अधिकरण “के” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “K” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI RAVISH SOOD, JM

रोक आवेदन सं./S.A. No. 521/Mum/2017
(Arising out of ITA No. 6765/Mum/2017)

(निर्धारण वर्ष / Assessment Year: 2013-14)

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रोक आवेदन सं./S.A. No. 561/Mum/2017
(Arising out of ITA No. 2053/Mum/2016)

(निर्धारण वर्ष / Assessment Year: 2011-12)

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रोक आवेदन सं./S.A. No. 562/Mum/2017
(Arising out of ITA No. 2235/Mum/2017)

(निर्धारण वर्ष / Assessment Year: 2012-13)

M/s. Thomson Reuters International Services Private Limited (successor in interest to Thomson Reuters India Services Private Limited) Prism Tower, A Wing, 8 th Floor, MindSpace, Off New Link Road, Goregaon (West), Mumbai-400 062	बनाम/ Vs.	Asst. CIT, Range – 13(3)(2), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AACW 1663 L		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri Sunil M. Lala
प्रत्यर्थी की ओर से/Respondent by	:	Shri V. Janardhana
सुनवाई की तारीख / Date of Hearing	:	09.03.2018
घोषणा की तारीख / Date of Pronouncement	:	13.03.2018

आदेश / ORDERPer Shamim Yahya, A. M.:

By way of this stay application, the assessee seeks the stay of outstanding demand of tax and interest for assessment years 2011-12, 2012-13 and 2013-14 respectively. The details of amount due and assessee's claim for refund due is as under:

Particulars	2011-12	2012-13	2013-14	Total
Tax on Assessed income	17,44,69,156	74,99,58,729	49,09,41,119	1,41,53,69,004
Interest	9,90,52,864	35,70,84,101	27,12,30,051	72,73,67,016
Total assessed tax	27,35,22,020	1,10,70,42,830	76,21,71,170	2,14,27,36,020
Regular assessment tax	4,10,30,000	28,64,66,279	-	32,74,96,279
Refund of AY 2015-16 (Note 1)				28,21,77,258
OGE Refund due (Note 2)				11,73,55,620
Total tax paid (including refunds due)	4,10,30,000	28,64,66,279	-	72,70,29,157
Percentage (on taxi)				51%
Percentage (on total)				34%

2. Thus the assessee has further submitted that the refund is due for assessment year 2015-16 and another refund due in case of an amalgamated company, the effective result of which is that a sum of Rs.72,70,29,157/- will only remain outstanding.

3. With respect to *prima facie* case, as regards the assessment year 2011-12, the ld. Counsel of the assessee submitted that the primarily issue involved is grant of deduction u/s. 10A for three units. As regards two units, he submitted that the issue is covered in favour of the assessee by Tribunal's decision in assessee's own case. For

the remaining one, the Id. Counsel of the assessee submitted that the same shall also stand covered in favour of the assessee on the touch stone of ratio of the said tribunal decision on identical issue. For assessment years 2012-13 and 2013-14, the Id. Departmental Representative submitted that primarily the issue involved is the selection of comparability's in transfer pricing adjustment. As regards the suitability of the comparables, he submitted that the Assessing Officer has himself passed an order in assessment year 2014-15 which will grant substantial deduction in the demand for the current year, if the same standard of comparability is followed in these assessment years. He further submitted that very high turnover comparables have also been used by the Assessing Officer and he stated that the courts have held that huge turnover comparables cannot be considered comparable with small turnover company. In these circumstances, the Id. Counsel of the assessee submitted that since the assessee has already paid/sought adjustment for 51% of the tax demand already paid and for the remaining it has a strong *prima facie* case in favour, an absolutely stay of demand should be granted.

4. Per contra, the Id. Departmental Representative submitted that the refund claimed by the assessee amounting to Rs.28,21,77,258/- is due in the name of an amalgamating company which has a different PAN number. He submitted that there are technical difficulties in the Income Tax Department due to which this amount cannot be adjusted with the demand of the assessee. He submitted that he will request

the concerned Assessing Officer to make the payment of the said amount within 60 days and the assessee should be called upon to make the said payment in the name of the assessee company accordingly. Furthermore, the Id. Departmental Representative submitted that even if the assessee's submission regarding relief granted to the assessee for comparable selection by the Assessing Officer in assessment year 2014-15 is considered, there will still be substantial demand outstanding. He further submitted that the assessee itself has got a substantial turnover. Hence, he claimed that it cannot claim that higher turnover companies cannot be compared with it so as to arrive at the transfer pricing adjustment. Hence, he submitted that the assessee should be asked to pay Rs.50 crores for the grant of stay.

5. We have heard both the counsels and perused the records. On the facts and circumstances of the case, as narrated hereinabove, we are of the opinion that the assessee has *a prima facie* case and a conditional stay can be granted. Accordingly, we grant the stay of demand on the following conditions:

1. The assessee shall pay a sum of Rs.15 crores on or before 31.3.2018
2. The refund of Rs.28 crores due in the name of amalgamating company shall be promptly paid to the Revenue in the name of the assessee company as and when received.
3. The registry is directed to fix the cases for out of turn hearing on 07.05.2018.

6. The non fulfillment of conditions of stay hereinabove, or unjustified seeking of adjustments by the assessee would render this stay cancelled. In terms of the

fulfillment of the above, the stay is granted to the stay for a period of 180 days from the date of this order.

7. In the result, these stay petitions are disposed of in terms of the above.

Order pronounced in the open court on 13.03.2018

Sd/-
(Ravish Sood)

न्यायिक सदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated : 13.03.2018

व.नि.स./Roshani, Sr. PS

Sd/-

(Shamim Yahya)

लेखा सदस्य / Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai