

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'I' NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

S.A. No.292/Del/2024

[Arising out of ITA No.3465/Del/2024]

Assessment Year: 2017-18

Avaya India Private Limited, 202, Platina, 2 nd Floor, Plot No. C-59, G-Block, Bandra Kurla Complex, Bandra (E), Mumbai	Vs.	Office of the Assistant Commissioner of Income Tax, Circle-1(1), Delhi
PAN :AAECA3592N		
(Appellant)		(Respondent)

Assessee by	Dr. Shashwat Bajpai, Advocate
Respondent by	Sh. Sandeep Kr. Mishra, Sr. DR

Date of hearing	13.09.2024
Date of pronouncement	13.09.2024

ORDER

PER SAKTIJIT DEY, V.P.:

Captioned application has been filed by the assessee seeking stay on recovery of outstanding demand pertaining to assessment year 2017-18.

2. We have heard Dr. Shashwat Bajpai, learned counsel appearing for the assessee and Sh. Sandeep Kr. Mishra, learned Departmental Representative.

3. For the assessment year under dispute, the assessee had filed its original return of income declaring total taxable income of Rs.113,81,26,250/-. Subsequently, the assessee filed revised return of income declaring income of Rs.100,54,94,040/- and claimed refund of Rs. 10,84,51,090/-. A draft assessment order was framed by the Assessing Officer making huge addition. Against the draft assessment order, the assessee raised objections before learned Dispute Resolution Panel (DRP). While disposing of the objections of the assessee, the DRP granted substantial relief in the matter of additions made. However, in the final assessment order, the Assessing Officer, without implementing the direction of learned DRP, repeated the very same additions made in the draft assessment order resulting in determination of total income of Rs. 156,05,60,919/- and creation of demand of Rs. 59,50,49,220/-. Being aggrieved with the final assessment order, the assessee preferred a revision application before learned Principal Commissioner of Income Tax. While disposing of the revision application, learned PCIT directed the Assessing Officer to

implement the directions of learned DRP. In pursuance to such direction of the PCIT, the Assessing Officer passed an order on 30.06.2024 determining the income at Rs.169,31,93,129/-. Since, the Assessing Officer again failed to implement the directions of learned DRP, the assessee filed an appeal before the Tribunal and also moved an application for rectification under section 154 of the Act before the Assessing Officer.

4. When the present application came up for hearing before the Bench on 9th August, 2024, having gone through the relevant facts, the Bench had directed learned Departmental Representative to seek necessary instructions from the Assessing Officer and submit a factual report. When the matter came up for hearing today, learned counsel appearing for the assessee placed before the Bench a copy of order dated 12.09.2024 passed by the Assessing Officer under 154 of the Act, wherein, the transfer pricing addition amounting to Rs. 55,50,66,879/- was substantially scaled down to 7,00,24,912/-. Even, the Assessing Officer has admitted that the transfer pricing addition was made inadvertently. The aforesaid facts clearly indicate complete non-application of mind by the Assessing Officer, even after directions were issued by two superior authorities, viz., DRP and PCIT. Even, insofar as the addition of

Rs.7,00,24,912/- is concerned, it is on account of transfer pricing adjustment on delayed receivables.

5. Learned counsel appearing for the assessee has placed on record the decision of the Tribunal rendered in assessee's own case in preceding assessment years, wherein, identical additions made have been deleted. Thus, it is evident, even the transfer pricing addition made on account of delayed receivables, is covered in favour of the assessee. Thus, in our view, not only assessee has made out a strong prima facie case but balance of convenience also exists in its favour.

6. In view of the aforesaid, we are inclined to grant stay on recovery of outstanding demand, which the Assessing Officer has raised or may raise in pursuance to the order pass under section 154 of the Act, for a period of 180 days from the date of this order till the disposal of the corresponding appeal, whichever is earlier.

7. Further, acceding to assessee's request for early hearing of the appeal, we direct the Registry to fix the corresponding appeal for hearing on 29th October, 2024, on an out of turn basis. Paper-books, if any, must be filed by the parties sufficiently ahead of the date of hearing of the appeal. Since, the date of hearing of appeal was announced in the open court, in presence of both the parties,

there is no need for issuance of separate notice of hearing to the parties.

8. In the result, stay application is allowed.

Order pronounced in the open court on 13th September, 2024

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
VICE-PRESIDENT

Dated: 13th September, 2024.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi