

Skol Breweries Limited Vs. the Acit

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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Apr-03-2007

Reported in : (2008)113TTJ(Mum.)61

Judge : G Veerabhadrappe, Vice, P M Devi, J Member

Appellant : Skol Breweries Limited

Respondent : The Acit

Judgement :

1. The assessee has filed the above stay petition requesting the Tribunal to stay the following demand stated to be outstanding in respect of the assessment framed for A. Y. 2003-04. Tax 65,522,886 (+) Interest 21.961.047 87,483,933 (-) Amount already paid 45,601.113 Amount outstanding.

41,882,820 2. The registry had posted this stay petition for hearing on Friday the 30th March 2007, when normally the stay petitions are listed for hearing. On 27th March 2007, the assessee moved an emergency petition requesting the Tribunal to interfere in the matter as the department had attached all its bank accounts after the CIT rejected its petition on the same date, thereby jeopardizing the business of the assessee.

The emergency petition was listed for hearing before the Bench on 27th March 2007 itself. The learned Departmental Representative pointed out that he cannot express any opinion as regards the merits of the stay petition for the want of the

stay petition itself After going through the record, the Tribunal granted interim stay directing the revenue not to enforce any coercive measures to recover the disputed dues till the stay petition was heard and disposed of on 30th March 2007. The order was so pronounced in the open court. The learned Departmental Representative who was present was directed to convey the interim stay granted by the Tribunal to the concerned revenue authorities. Apart from this, the Registry was also directed to furnish the order-sheet entries of the Bench to the revenue authorities for the same to be effectively communicated. When the stay petition was listed for hearing on 30th March 2007, the learned Counsel for the assessee stated that despite the interim stay granted by the Tribunal, Shri S.A.R. Shaikh the Assistant Commissioner of Income-tax Circle 8(3) has already recovered the money to the extent of Rs. 2.68 crores. The learned Departmental Representative pointed out that this was voluntary payment by the assessee in order to enable the Assessing Officer to lift the attachment on the bank account and help the assessee to do the business transactions through the bank. The Tribunal felt that the revenue has exceeded its jurisdiction and wanted to personally hear the Assessing Officer who recovered the money and accordingly announced absolute stay in the matter with a direction to the Departmental Representative to appear along with Shri S.A.R. Shaikh the ACIT on 2nd April 2007.

3. On 2nd April 2007, the learned Departmental Representative appeared along with Shri S.A.R. Shaikh the ACIT and Shri Y.D. Sharma, Additional CIT Range 3. The revenue authorities, who appeared, pleaded that the recovery has been done in the month of March without any force and the Assessing Officer pointed out that he was willing to refund the amount within a days time, if so directed by the Bench. The additional CIT -Shri Sharma also pleaded that he himself and the Assessing Officer has great respect for the Tribunal and does not want to enter into any contempt of its order. It was pointed out that some of the Tribunal orders are directly in favour of the revenue on the disputed issue and, therefore, the stay should not be granted as announced by the Bench.

The assessee on its part has also filed an affidavit stating the circumstances under which the payment was required to be made. The matter was adjourned to 3rd April 2007 to enable the department to consider the refund of the amount as the

same, in our view, has been done in violation of the interim order passed in this regard.

4. On 3rd April, 2007 the Assessing Officer as well as the Additional CIT appeared along with the learned Departmental Representative and gave the cheque drawn in favour of the assessee in our presence. They further pleaded that further proceedings in the matter may be dropped and absolutely they had no intention to violate the orders of the Tribunal. It was done with a good intention and in zeal to recover the outstanding arrears. The learned Counsel for the assessee, on the other hand, also pleaded that he was ready to go ahead with the matter any time from now and would not like to prolong the issue as also co-operate for the early disposal of the appeal. Therefore, we pass the following order: i) Absolute stay is granted to the assessee for a period of 180 days from the date of this order or till the disposal of the appeal, whichever is earlier; ii) The revenue as well as the assessee shall file their paper-book well in advance so that the matter does not get adjourned. The parties shall not seek unnecessary adjournment, iii) The department is free to retain the refund that may be due to the assessee, which is stated to be to the extent of Rs. 1.5 crores as arising out of the consequential orders, which the department is yet to pass in the earlier years. If the department was to pass any consequential order during the pendency of this appeal in the Tribunal to the extent stated above, it is free to appropriate the same to the arrears outstanding. This order shall not preclude the revenue authorities from doing so.

iv) The Registry is directed to post this appeal for hearing on 28th June 2007.

5. In the result, the stay application is allowed and it was so pronounced in the open court.

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