

No stay of demand just because Google intends to appeal in HC against order of ITAT: Bengaluru ITAT

Summary – The Bengaluru ITAT in a recent case of Google India (P.) Ltd., (the Assessee) held that Merely because assessee is proposing to file appeal against orders of Tribunal before High Court and also intends to file miscellaneous application before Tribunal, same cannot be a valid ground for stay of demand

Facts

- A demand of Rs.59.42 crore had arisen on account of treating the payment made by the assessee-company to Ireland based AE, as payment in the nature of royalty both under the provisions of domestic law as well as under DTAA between India and Ireland. Admittedly, this issue was covered against the assessee by recent orders of this Tribunal.
- The stay was earlier granted by the Tribunal subject to payment of Rs.70 crores out of total demand of Rs.129.42 crore. This stay was extended for four times.
- The present stay petition was filed seeking further extension of the stay of demand.

Held

- In light of recent order of this Tribunal in assessee's own case, the issue in appeal is covered against the assessee-company. Therefore, it cannot be said that there is *prima facie* case in favour of assessee. The Apex Court, in the case of *Asstt. Collector of Central Excise v. Dunlop India Ltd.* [1985] 154 ITR 172 laid down the following three parameters to be taken into consideration at the time of grant of stay of demand by the appellate authorities:
 - i. Existence of *prima facie* case
 - ii. Financial hardship, and
 - iii. Irreparable injury and balance of convenience.
- The only ground on which the assessee is seeking extension of stay of demand is that he is proposing to appeal against the recent orders of the Tribunal for earlier years before the High Court and also intends to file Miscellaneous application before this Tribunal. In our considered opinion, this cannot be a valid ground for stay of demand. Unless and until, the orders passed by an appellate authority are reversed by the higher appellate authority or reviewed by its own, the orders passed shall hold the field and shall be binding on both the parties. Even on the proposed action to file rectification application before this Tribunal, it is hypothetical situation since the appellant had not yet filed any Miscellaneous Petition before this Tribunal. Even assuming that any such petition is filed, scope and ambit of all such applications is very limited and having regard to the decision of the

jurisdictional High Court in the case of *CIT v. McDowell & Co. Ltd.* [2004] 269 ITR 451(Kar.), in proceeding under section 254(2), the Tribunal is not empowered to change the final outcome of the appeal.

- Thus, having regard to the above legal position, the assessee-company had not made out a case for stay of the demand. In the circumstances, the stay petition seeking extension of stay is not maintainable and is accordingly dismissed.