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

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
[Through Video Conferencing]

S.A. No. 190/Del/2021
(Arising out of ITA No.961/Del/2015)
Assessment Year: 2010-11
And
S.A. No.191/Del/2021
(Arising out of ITA No.287/Del/2016)
Assessment Year: 2011-12
And
S.A. No.192/Del/2021
(Arising out of ITA No.901/Del/2017)
Assessment Year: 2012-13
And
S.A. No.193/Del/2021
(Arising out of ITA No.6949/Del/2017)
Assessment Year: 2013-14
And
S.A. No.194/Del/2021
(Arising out of ITA No.8009/Del/2018)
Assessment Year 2014-15
And
S.A. No.195/Del/2021
(Arising out of ITA No.8968/Del/2019)
Assessment Year 2015-16

M/s. Maruti Suzuki India Ltd., Plot No. 1, Nelson Mandela Road, Vasant Kunj, New Delhi	**Vs.**	DCIT, Circle-16(1), New Delhi
PAN :AAACM0829Q		
(Applicant)		**(Respondent)**

Applicant by	Sh. Ajay Vohra, Sr. DR Ms. Soumya Jain, CA
Respondent by	Sh. M. Baranwal, Sr.DR

Date of hearing	13.08.2021
Date of pronouncement	13.08.2021

ORDER

PER O.P. KANT, AM:

These stay applications have been filed by the assessee seeking extension of the stay of demand granted earlier by the Tribunal and extended from time to time. The last stay was granted by the Tribunal vide order dated 15/02/2021 for a further period of six months or till passing of the order whichever was earlier. The appeal of the assessee for AY 10-11 was heard partly on 08/10/2020 and thereafter adjourned from time to time. Detailed reasoning for adjournment submitted by the assessee are reproduced as under:

> *"On 08.04.2021 (day prior to the date of hearing), the applicant filed an application requesting for withdrawal of additional ground raised for claiming refund of DDT, primarily to expedite disposal of the appeal.*
>
> *On 09.04.2021, the part-heard appeal for assessment year 2010-11, alongwith appeals for other years, was however adjourned to 03.05.2021 at the request of the Department Representative to await the decision on the application for special bench on the issue of refund of DDT in terms of foreign tax treaty.*
>
> *On 03.05.2021, the part-heard appeal was again adjourned to 02.06.2021 at the request of the Department Representative.*

> *On 02.06.2021, the part-heard appeal was adjourned by the Bench to 07.07.2021 to await the decision on Department's application for constitution of special bench on the issue of refund of DDT.*
>
> *In the meanwhile, the applicant filed an application for early hearing in appeal for assessment year 2010-11 which was, fixed for hearing on 25.06.2021.*
>
> *On 25.06.2021, in view of the withdrawal of additional ground relating to DDT by the applicant, it was decided that the part-heard appeal for assessment year 2010-11 may be taken up first, while the appeal for other years, i.e., 2011-12 to 2015-16 may be requested by the Department to be referred to the special bench on DDT issue. Departmental Representative also mentioned about non-availability for 7.07.2021 and thus all appeals were directed to be fixed for hearing on 26.07.2021.*
>
> *On 26.07.2021, the part-heard appeal was adjourned to 03.08.2021 at the request of the Department Representative;*
>
> *On 03.08.2021, the part-heard appeal was adjourned to 16.08.2021 at instance of the Hon'ble Bench."*

2. Before us, the learned Senior Counsel of the assessee submitted that delay in disposal of the appeals is not attributable to the assessee and, therefore, stay granted vide order dated 15/02/2021 might be further extended.

3. The Learned DR, on the other hand, objected and submitted that in view of the amendments in section 254(2A) of the Income-tax Act, 1961 (in short 'the Act') by way of Finance Act, 2020 seeking to modify power of the Tribunal to grant a stay subjected to deposit not less than 20% of the disputed demand, the assessee might be directed to pay the demand to the extent of 20% of the outstanding demand in respect of the issues which are not covered in its favour.

4. We have heard rival submission of the parties and perused the relevant material on record. We find that the issue of application of amended section 254(2A) has already been dealt by the Tribunal in its order dated 15/02/2021. The relevant part of the order is reproduced as under:

> *"8. Coming to the arguments of the learned Senior Counsel that amendment brought by the Finance Act, 2020 in Section 254(2A) of the Finance Act, 2020 whereby the following amendment has been brought in the 1st and 2nd proviso:*
>
> > *"(a) is, with effect from 01.04.2020, empowered to grant stay only if the assessee deposits not less than 20% of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of the Act, or furnishes security of equal amount in respect thereof;*
> >
> > *(b) shall not, in terms of the substituted 2nd proviso to section 254(2A) of the Act, extend stay granted earlier unless the condition referred to in first proviso has been complied with."*
>
> *8. The amendment in 1st proviso in our opinion would apply to a case where the stay is sought and granted for the first time on or after 01.04.2020; and 2nd proviso will apply to the case where extension is sought for the stay so granted under the amended provision of 1st proviso. Thus, 1st proviso would be applicable to stay that would come up for consideration for the first time after 01.04.2020, where now the statutes provides that stay would be granted only if the assessee deposits 20% of the demand or furnishes security. Under the substituted 2nd proviso it has been provided that Tribunal shall not extend stay granted earlier unless the condition referred to in its 1st proviso has been complied with, i.e., it will only apply to cases where fresh stay was granted after 01.04.2020. Accordingly, the amendment would not apply here in this case, because the stay was granted by the Tribunal prior to 01.04.2020 and also was extended from time to time prior to the stage. Hence, we do not find any merits in the argument of the ld. Special Counsel appearing on behalf of the Revenue."*

4.1 The Tribunal in its order dated 15/02/2021 has also noted arguments of the learned counsel of the assessee that assessee has already deposited more than 50% of outstanding demand on aggregate basis for various years. The relevant part of the order of the Tribunal is reproduced as under:

> *"4. Apart from that, he pointed out that the applicant- assessee has already deposited substantial amount against the outstanding demand, viz., Rs.250 crore for Assessment Year 2010-11; Rs.152 crore for Assessment Year 2014-15; and Rs. 100 crore for Assessment Year 2015-16. Thus, in all the years, assessee has deposited aggregate amount of Rs.502 crore. If aggregate demand in the captioned assessment years is taken into account for the uncovered issue which amounts to Rs.819.41 crore, against which the assessee has already deposited around 61% of the aggregate demand. Thus, the assessee has a prima facie good case for extension of stay of demand. On the last date of hearing, the matter got adjourned for the reason that the Revenue has filed a petition for constitution of Special Bench on the issue of dividend distribution tax (DDT) as raised in additional ground by the assessee where the assessee has claimed that it has deducted TDS at the prescribed rate given in the Income Tax, 1961 on the DDT instead of lower rate given in the treaty with Japan. Thus, there was no default on the part of the assessee to conduct the hearing which was fixed on 12.02.2021."*

4.2 We also note that the appeal of the assessee are being taken up for hearing and appeal for assessment year 2010-11 was kept as part heard, which is presently in the process of being heard on day-to-day basis. We are of the opinion that the delay in disposal of the captioned appeals is not attributable to the assessee. Keeping in view the facts and circumstances of the case and part of the demand already paid, we are extending the outstanding demand of the assessment years involved in captioned appeals for a further period of six months or till passing of the order, whichever is earlier.

5. In the result, the stay applications of the assessee are allowed.

Order pronounced in the open court on 13th August, 2021.

Sd/-	***Sd/-***
(AMIT SHUKLA)	**(O.P. KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 13th August, 2021.
RK/-(DTDC)
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi