

\$~64

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 1475/2022

ADITI INFRABUILD AND SERVICES LIMITED Petitioner

Through Mr.Himanshu Sinha, Advocate.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 1(2) &
ANR. Respondents

Through Mr.Sanjay Kumar, Advocate.

% Date of Decision: 25th January, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

MANMOHAN, J (ORAL)

C.M.No.4242/2022

Exemption allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

W.P.(C) No.1475/2022

1. The matter has been heard by way of video conferencing.
2. Present writ petition has been filed seeking refund of Rs.1,83,91,108/- which was recovered in excess of 20% of the total disputed tax demand for the Assessment Year 2016-17 against the refunds due for the Assessment Years 2017-18, 2018-19 and 2019-20. Petitioner also seeks directions restraining the Respondents from recovering any further tax demand for the

Assessment Year 2016-17 till the disposal of the appeal filed by the Petitioner before the Commissioner (Appeals) which is currently pending adjudication under the Faceless Appeal Scheme, 2020.

3. Learned counsel for the Petitioner states that under Section 220(6) of the Income Tax Act, 1961 [the Act], the Assessing Officer has been conferred with the power to grant stay on recovery of outstanding tax demand subject to fulfilment of appropriate conditions. He states that in order to provide guidance and lay down principles regarding stay of the demand, the Central Board of Direct Taxes has issued various Circulars/ Notifications from time to time including Office Memorandums dated 29th February, 2016 and 31st July, 2017, prescribing that in cases where an assessee challenges the additions/disallowances made in the assessment order by way of an appeal before the First Appellate Authority, i.e., CIT(A), and during pendency thereof deposits 20% of the total disputed outstanding tax demand, the assessing officer is empowered to grant stay of recovery of the balance outstanding demand.

4. Learned counsel for the Petitioner submits that upon payment/recovery of the standard rate of 20% of the disputed outstanding tax demand, the assessing officer is mandated to grant stay on recovery of the balance disputed outstanding tax demand till disposal of first appeal of the assessee, unless the case of the assessee falls in the category mentioned in paragraph 4(B) of the Office Memorandum dated 29th February, 2016. He states that the Respondents in violation of the provisions of the Office Memorandums recovered the disputed outstanding tax demand in excess of 20% by way of adjustment of refunds due for subsequent assessment years. He emphasises that while 20% of the disputed amount for the Assessment

Year 2016-17 was Rs.2,46,94,105/- (20% of Rs.12,34,70,529/-), the respondent adjusted Rs.4,30,85,213/- being 35% of the demand amount.

5. He further states that the Respondent No.1 erred in passing a restrictive stay order dated 11th February, 2019 wherein the stay was granted only till 11th December, 2019, which is in clear violation of the binding directions of the CBDT Office Memorandum as it mandates the assessing officer to grant stay till disposal of the first appeal.

6. Issue notice. Mr.Sanjay Kumar, Advocate accepts notice on behalf of the respondents. He states that in the present case, the respondents are only adjusting the refund against the outstanding tax demand and not making any recoveries.

7. Having heard learned counsel for the parties, this Court is of the view that the issue raised in the present writ petition is no longer *res integra*. This Court in *Skyline Engineering Contracts (India) Pvt. Ltd. v. Deputy Commissioner of Income Tax Circle 22(2), W.P.(C) 6172/2021* and other connected matters has in similar facts held as under:-

“9. Having heard learned counsel for the parties, this Court is of the view that the Government is bound to follow the rules and standards they themselves had set on pain of their action being invalidated. [See: Amarjit Singh Ahluwalia vs. State of Punjab & Ors. 1975 (3) SCR 82 and Ramana Dayaram Shetty vs. International Airport Authority of India & Ors. 1979 SCR (3) 1014].

10. This Court is also of the view that the office memorandum dated 29th February, 2016 read with office memorandum dated 25th August, 2017 stipulate that the Assessing Officer shall normally grant stay of demand till disposal of the first

appeal on payment of 20% of the disputed demand. In the event, the Assessing Officer is of the view that the payment of a lump sum amount higher than 20% is warranted, then the Assessing Officer will have to give reasons to show that the case falls in para 4(B) of the office memorandum dated 29th February, 2016.

11. This Court finds that the order under Section 245 of the Act for adjustments of refunds as well as the order on stay of demand under Section 220(6) of the Act do not give any special/particular reason as to why any amount in excess of 20% of the outstanding demand should be recovered from the petitioner-assessee at this stage in accordance with paragraph 4(B) of the office memorandum dated 29th February, 2016. Consequently, this Court is of the view that the respondent is entitled to seek pre-deposit of only 20% of the disputed demand during the pendency of the appeal in accordance with paragraph 4(A) of the office memorandum dated 29th February, 2016, as amended by the office memorandum dated 25th August, 2017.

12. Consequently, this Court is of the view that the respondents are entitled to seek pre-deposit of only 20% of the disputed demand during the pendency of the appeals in accordance with paragraph 4(A) of the office memorandum dated 29th February, 2016, as amended by the office memorandum dated 25th August, 2017.

13. Accordingly, the respondent no.1 is directed to refund the amount adjusted in excess of 20% of the disputed demand for the Assessment Year 2017-18, within four weeks.....”

8. Keeping in view the aforesaid mandate of law as well as the fact that refunds have been adjusted against outstanding tax demand by the Authority without mentioning that the case of the assessee falls in the category mentioned in paragraph 4(B) of the Office Memorandum dated 29th February, 2016 and/or without passing any order under Section 245 of the Act, this Court is of the opinion that the petitioner is entitled to refund of adjustments made in excess of 20% of the disputed tax demands.

9. This Court is also of the view that the restrictive stay order dated 11th February, 2019 issued by the Respondents granting stay to the Petitioner only till 31st December, 2019 is in violation of the directions of the CBDT as well as previous orders of this Court wherein it has been held that the assessing officer must grant stay till the disposal of the first appeal.

10. Consequently, this Court directs the respondents to verify the facts stated in the writ petition and if it finds them to be true and correct, then refund the amount adjusted in excess of 20% of the disputed tax demands for the Assessment Year 2016-17 to the petitioner within four weeks. With the aforesaid direction, present writ petition stands disposed of.

MANMOHAN, J

NAVIN CHAWLA, J

JANUARY 25, 2022
KA