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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 1924/2022
DR. PRIYA NARULA Petitioner
Through Mr.Vikram Kakar, Advocate.

versus

DY. COMMISSIONER OF INCOME TAX CIRCLE
INTERNATIONAL TAXATION 2 (2) (2) & ORS. Respondents
Through Ms.Easha, Advocate.

% Date of Decision: 03rd February, 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.5517/2022

Exemption allowed, subject to all just exceptions.

Accordingly, the applications stand disposed of.

W.P.(C) 1924/2022 & C.M.No.5518/2022

1. The matter has been heard by way of video conferencing.
2. Present writ petition has been filed seeking refund of Rs.2,87,520/- which was recovered in excess of 20% of the total disputed tax demand for the Assessment Year 2017-18 against the refunds due for the Assessment Years 2020-21 and 2021-22.
3. Learned counsel for the petitioner states that under Section 220(6) of the Income Tax Act, 1961 [for short 'the Act'], the Assessing Officer has

been conferred with the power to grant stay on recovery of outstanding tax demand subject to fulfillment of appropriate conditions. He states that in order to provide guidance and lay down principles regarding stay of 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 the 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 states 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 (B) of the Office Memorandums dated 29th February, 2016 and 31st July, 2017. He states that in violation of the provisions of the Office Memorandums, the respondents recovered the disputed outstanding tax demand in excess of 20% by way of adjustment of refunds due for subsequent assessment years.

5. He states that the petitioner had made a payment of Rs.2,23,150/- (20% of Rs.11,15,733/-) being 20% of the disputed amount for the Assessment Year 2017-18 on 13th March, 2021 pursuant to the directions in the stay order dated 9th March, 2020 issued by the respondents. However, despite complying with the stay order, the respondents adjusted

Rs.2,87,520/- being 25% of the demand from the refunds due to the petitioner for the Assessment Years 2020-21 and 2021-22.

6. Issue notice. Ms.Easha, Advocate accepts notice on behalf of the respondents. She admits that the relief sought in the present writ petition is covered by the judgment of this Court in the case of *Skyline Engineering Contracts (India) Pvt. Ltd. v. Deputy Commissioner of Income Tax Circle 22(2), W.P.(C) 6172/2021*, wherein it has been 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.....”

7. Keeping in view the aforesaid mandate of law, 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.

8. 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 2017-18 to the petitioner within four weeks.

9. Till the disposal of the appeal filed by the CIT(A), the respondents are restrained from adjusting and/or recovering any further amounts against the impugned demand.

10. With the aforesaid direction, present writ petition and application stand disposed of.

MANMOHAN, J

NAVIN CHAWLA, J

FEBRUARY 03, 2022/KA