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

+ W.P.(C) 6784/2022

SEVEN SEAS HOSPITALITY PRIVATE LIMITED Petitioner

Through: Mr.Salil Kapoor with Mr.Tarun
Chanana, Advocates.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL,
DELHI - 3 & ORS. Respondents

Through: Mr.Vibhooti Malhotra, senior
standing counsel for the Revenue.

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Date of Decision: 02nd May, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

MANMOHAN, J (Oral):

C.M.No.20624/2022

Exemption allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

W.P.(C) No.6784/2022 & C.M.No.20623/2022

1. Present writ petition has been filed challenging the orders dated 31st March, 2022 and 13th December, 2021, passed by Respondents No.1 & 2, without considering the submissions made by the Petitioner.
2. Learned counsel for the Petitioner states that the Petitioner Company filed an application for stay of demand under Section 220(6) of the Act for

the assessment years 2013-14 to 2019-20 on the ground that the appeal filed by the Petitioner before the CIT(A) against the additions made by Respondent No.2 is pending adjudication and the Petitioner Company is under financial stress on account of COVID-19 pandemic and further on account of the fact that the accounts of the Petitioner Company have been declared as NPA by all the banks due to non-payment of principal installment and interest amount to banks.

3. Learned counsel for the Petitioner states that Respondents Nos.1 & 2 have passed the impugned orders rejecting the plea of the Petitioner to stay the demand and directed the Petitioner to pay 20% of the total outstanding demand of Rs.37,52,08,576/-. He submits that Respondents Nos.1 & 2 have also rejected the stay application filed by the Petitioner in a cryptic manner.

4. Issue notice. Ms.Vibhooti Malhotra, senior standing counsel accepts notice on behalf of the Respondents. She states that the PCIT has considered the submissions advanced by the Petitioner and has granted installments to the Petitioner.

5. Having heard learned counsel for the parties and having perused the two office memorandums dated 29th February, 2016 and 31st July, 2017, this Court is of the view that the requirement of payment of twenty percent of disputed tax demand is not a pre-requisite for putting in abeyance recovery of demand pending first appeal in all cases. The said pre-condition of deposit of twenty percent of the demand can be relaxed in appropriate cases. Even the Office Memorandum dated 29th February, 2016 gives instances like where addition on the same issue has been deleted by the appellate authorities in earlier years or where the decision of the Supreme Court or jurisdictional High Court is in favour of the assessee.

6. In fact the Supreme Court in *PCIT vs. M/s LG Electronics India Pvt. Ltd.* (2018) 18 SCC 447 has held that tax authorities are entitled to grant stay on deposit of amounts lesser than twenty percent of the disputed demand in the facts and circumstances of a case. The relevant portion of the said judgment is reproduced hereunder:

‘Having heard Shri Vikramjit Banerjee, learned ASG appearing on behalf of the appellant and giving credence to the fact that he has argued before us that the administrative Circular will not operate as a fetter on the Commissioner since it is a quasi-judicial authority, we only need to clarify that in all cases like the present, it will be open to the authorities, on the facts of individual case, to grant deposit orders of a lesser amount than 20%, pending appeal.’

7. In the present case, the impugned orders are non-reasoned orders inasmuch as Respondent Nos. 1 and 2 have not considered the submissions of the Petitioner in the stay applications dated 14th December, 2021, 30th December, 2021 and 18th November, 2021 and thus, the discretion vested in Respondents Nos. 1 and 2 has not been exercised judiciously. Further, neither the Assessing Officer nor the PCIT have considered the three basic principles i.e. the prima facie case, balance of convenience and irreparable injury while deciding the stay application.

8. Consequently, the impugned orders and notices are set aside and the matter is remanded back to the PCIT for fresh adjudication on the applications for stay. However, before deciding the stay applications, the PCIT shall grant a personal hearing to the authorised representative of the Petitioner. For this purpose, list the matter before the PCIT on 23rd May, 2022. After grant of personal hearing, the PCIT shall pass a reasoned order in accordance with law.

9. It is clarified that till the stay applications filed by the Petitioner are not decided, no coercive action shall be taken by the Respondents against the Petitioner in pursuance to the demands arising out of the orders dated 31st March, 2022 and 13th December, 2021.

10. With the aforesaid directions, the present writ petition along with pending application stands disposed of.

MANMOHAN, J

DINESH KUMAR SHARMA, J

**MAY 02, 2022
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