

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6850 OF 2018

(Arising out of SLP(Civil)No.19027 of 2018 @ Diary No.18927 of 2018)

PRINCIPAL COMMISSIONER OF INCOME TAX 5 & ORS. ... Appellant (s)

Versus

M/S. LG ELECTRONICS INDIA PVT. LTD. ... Respondent (s)

O R D E R

Delay condoned.

Leave granted.

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 cases, to grant deposit orders of a lesser amount than 20%, pending appeal.

The appeal is disposed of accordingly.

*Pending application, if any, shall stand disposed
of.*

*.....J.
(ROHINTON FALI NARIMAN)*

*.....J.
(INDU MALHOTRA)*

*New Delhi,
Dated: 20th July, 2018.*

ITEM NO.21

COURT NO.9

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 18927/2018

(Arising out of impugned final judgment and order dated 08-08-2017 in WP(C) No. 6778/2017 passed by the High Court Of Delhi At New Delhi)

PRINCIPAL COMMISSIONER OF INCOME TAX 5 & ORS. Petitioner(s)

VERSUS

M/S LG ELECTRONICS INDIA PVT LTD Respondent(s)
(FOR ADMISSION and I.R. and IA No.84115/2018-CONDONATION OF DELAY
IN FILING and IA No.84116/2018-EXEMPTION FROM FILING C/C OF THE
IMPUGNED JUDGMENT)

Date : 20-07-2018 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MS. JUSTICE INDU MALHOTRA

For Petitioner(s) Mr. Vikramjit Banerjee, ASG,
 Mr. Arijit Prasad, Adv.
 Mr. Manish Pushkarna, Adv.
 Mr. Praveena Gautam, Adv.
 Mrs. Anil Katiyar, AOR

For Respondent(s) Mr. Deepak Chopra, Adv.
 Ms. Rashmi Chopra, Adv.
 Mr. Amit Srivastava, Adv.
 Mr. Ankul Goyal, Adv.
 Mr. Harpreet Singh Ajmani, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is disposed of in terms of the signed order.

Pending applications, if any, shall stand disposed of.

(SHASHI SAREEN)
AR CUM PS

(SAROJ KUMARI GAUR)
BRANCH OFFICER

(Signed order is placed on the file)

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

+ **W.P. (C) No. 6778/2017**

LG ELECTRONICS INDIA PRIVATE LIMITED Petitioner
Through : Mr. Deepak Chopra and Mr. Amit
Shrivastava, Advocates.

versus

PR. COMMISSIONER OF INCOME TAX & ORS. Respondents
Through : Mr. Asheesh Jain, Senior Standing
Counsel.

CORAM:

DR. JUSTICE S. MURALIDHAR

MS. JUSTICE PRATHIBA M. SINGH

ORDER

08.08.2017

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W.P. (C) No. 6778/2017 & C.M. APPL. 28225/2017 (stay)

1. Notice.

2. Mr. Asheesh Jain, learned Senior Standing Counsel, accepts notice on behalf of the Respondents.

3. The challenge in this petition is to the order dated 2nd August, 2017 passed by the Principal Commissioner of Income Tax ('PCIT') by which the Petitioner was directed to pay 20% of the tax demand of Rs. 32 crores amounting to Rs. 6.4 crores by 11th August, 2017 in order to get a stay of the demand up to 15th December, 2017 pending consideration of the Petitioner's appeal before the Commissioner of Income Tax (Appeals) ['CIT(A)'] against the order dated 30th June, 2017 passed by the Assistant Commissioner of Income Tax-Circle 15(1) (hereafter Assessing Officer -

W.P.(C) 6778/2017

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AO), levying a penalty under Section 271 (1) (c) of the Income Tax Act, 1961 ('Act'). By the said order the AO raised a demand of Rs. 32,00,07,958 for the Assessment Year ('AY') 2007-08 and directed the Petitioner to deposit the said amount on or before 31st July, 2017.

4. The Petitioner-Assessee filed an appeal against the order before the CIT (A). The Petitioner also filed an application under Section 220(6) of the Act seeking stay of the recovery proceedings. In the said application for stay, the Assessing Officer ('AO') directed the Petitioner, by order dated 20th July 2017, to deposit 15% of the total tax demand in terms of the Office Memorandum ('OM') dated 29th February, 2016.

5. The contention of the Petitioner is that the limitation period, in terms of Section 275 (1) (a) of the Act, had already expired. Aggrieved by the above order dated 20th July, 2017, the Petitioner went before the PCIT who, by the impugned order dated 2nd August, 2017, disposed of the application of the Petitioner by the following order sheet entry.

“Present Sh. Vishal Rastogi, AGM of LG requested to make payment of 20% of the tax demand of 32Cr. Amounting to 6.4 Cr. by 11.08.2017 to get stay of demand upto 15.12.2017”

6. Mr. Deepak Chopra, learned counsel for the Petitioner, has produced before this Court a copy of OM dated 31st July, 2017 which modifies the earlier OM, dated 29th February, 2016, issued by the Central Board of Direct Taxes ('CBDT'), stating that standard rate for grant of stay had been revised from 15% to 20% of the disputed demand.

7. The impugned order clearly makes no reference to the central issue in the

pending appeal or the grievance of the Petitioner regarding the order passed by the AO. The impugned order in short is without reasons and is therefore unsustainable in law.

8. For the above reasons, the impugned order is set aside and a direction is issued that the Petitioner's application will once again be heard by the PCIT on merits and without reference to the OM dated 31st July, 2017, which, on the face of it, appears to curtail his discretion. The PCIT will dispose of the application with a reasoned order not later than two weeks from the date of receipt of this order.

9. The CIT (A) shall also consider the request of the Petitioner for an expeditious disposal of the appeal.

10. The petition and the pending application are disposed of in the above terms.

11. Copy of the order be given *dasti* under the signature of the Court Master.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

AUGUST 08, 2017

dk