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

+ W.P.(C) 6885/2022 & CM Appl. 20970-20971/2022

GOEL ROAD CARRIERS PRIVATE LIMITED. Petitioner
Through: Mr. Nitin Gulati, Advocate.

versus

ASSISTANT COMMISSIONER OF INCOME
TAX CIRCLE-10(2), DELHI & ANR. Respondents
Through: Mr. Ajit Sharma, Advocate.

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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):

1. Present writ petition has been filed seeking refund of Rs.57,65,410/-, which was recovered in excess of 20% of the total disputed tax demand, for the Assessment Year 2012-13 against the refund due for the Assessment Year 2020-21. Petitioner also seeks a direction to the respondents to expeditiously decide the appeal filed against the order dated 27th November, 2019 under Section 144 of the Income Tax Act, 1961 [for short 'the Act'].

2. Learned counsel for the petitioner states that under Section 220(6) of 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 demand, the Central Board of Direct Taxes has issued various Circulars/ Notification from time to time including Office Memorandums dated 29th February, 2016 and 31st July, 2017, prescribing therein that in such 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.

3. 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 the 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 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.

4. He states that while 20% of the disputed amount for the Assessment Year 2012-13 was Rs.37,78,520/- (20% of Rs.1,88,92,600/-), the respondents adjusted Rs.95,43,930/- being 51% of the demand and that too without deciding petitioner's application for stay.

5. Issue notice. Mr. Ajit Sharma, learned counsel accepts notice on behalf of the respondents. He points out that in the writ petition it has been

admitted that petitioner has been issued an intimation dated 29th November, 2021 under Section 245 of the Act.

6. In rejoinder, learned counsel for the petitioner clarifies that the intimation under Section 245 of the Act is only for adjustment of Rs.30,000/- which was raised against the penalty under Section 271B of the Act. He has handed over a photocopy of the intimation under Section 245 Act, which is taken on record.

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, bearing similar facts, has 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 refund has been adjusted against the outstanding tax demand by the Authority without following the due procedure prescribed under the said Section inasmuch as no notice or opportunity of pre-decisional hearing had been provided to the petitioner prior to such adjustment of refund, 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 and Rs.30,000/- set off of refunds against tax payable.

9. 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 2012-13 as well as Rs.30,000/- as mentioned in the intimation under Section 245 of the Act to the petitioner within four weeks. The Appellate Authority is also directed to decide the petitioner's appeal challenging the order dated 27th November, 2019 within a year.

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

MANMOHAN, J

DINESH KUMAR SHARMA, J

MAY 2, 2022

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