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

\+ W.P.(C) 7511/2016, CM No. 30918/2016

MAX LIFE INSURANCE CO. LTD. ..... Petitioner

Through: Mr. M.S. Syali, Sr. Advocate along with Ms. Husnal Syali, Advocate.

versus

DEPUTY COMMISSIONER OF INCOME TAX & ORS. ..... Respondents

Through: Mr. Ruchir Bhatia, Sr. Standing Counsel along with Mr. Puneet Rai, Jr. Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

O R D E R

% **02.09.2016**

Issue notice. Mr. Puneet Rai, Advocate appearing on behalf of the respondents accepts notice.

The petitioner's grievance is with respect to the order of the Assessing Officer under Section 220 (6) of the Income Tax Act, 1961, refusing to accede to the assessee's request to comply with the 15% of the disputed tax demanded to the extent of the demand in terms of the impugned order.

The assessee carries on Life Insurance business. It contended *inter alia* that being regulated by various provisions of law, including the Insurance Act, 1938, it is bound to invest some of its deposit receipts from policy holders in stipulated class of investment. It contended that the income derived from sale of these investment policies deserves to be treated as part of its insurance business and was taxable at the fixed rate of 12 ½ %, in terms of the rules contained in the First Schedule of the Income Tax Act read with Section 44. The assessee had relied upon the judgment of this court in ***Oriental Insurance vs. CIT*** reported in **(2015) 378 ITR 421 (Del)**. It also relied upon the circumstance that in one of the previous orders, its contentions with respect to the taxability of the income derived from the sale of such investments was taxed as an integral part of its insurance business. The AO while rejecting the assessee's request, took note of the other past assessment orders where the DRP had determined that the sale of such investments had to be treated separately as ordinary business income and not arising out of insurance business. Based on these facts, the assessment order was made; the assessee had approached this court on previous occasions seeking intervention under Article 226 of the Constitution since its application under Section 220(6) of the Income Tax Act had not been considered. That writ petition [W.P.(C) No. 6610/2016] was disposed of with a direction to the AO to consider all relevant aspects and pass an order. By the impugned order, the AO has required the petitioner to deposit Rs. 2.85 crores of the demand payable. The assessee contends, having regard to Section 27 and the rules contained in the First Schedule, this is a clear case of undue hardship. It also relies upon the guidelines dated 29.02.2016, issued by the Central Board of Direct Taxes (CBDT), requiring the assessing authorities to grant or refuse the guidelines under conditions thereof. It is also submitted that the assessee has already deposited Rs. 50 lacs and that said amount is sufficient in the circumstances having regard to the decisions of the court in past proceedings. Learned counsel for the revenue, on the other hand, contends that ***Oriental Insurance Company*** (*supra*) was a judgment delivered under different circumstances since the assessee in that case was in the business of general insurance. He pointed to Rule 5 of the First Schedule of the Income Tax Act, to contend that having regard to these differences, the impugned order was warranted and that order of the AO should not be interfered with.

This court has considered the circumstances of the case. It appears that the assessee has an arguable case. However, having regard to the fact that his appeal is pending before the CIT(A), the question which this court has to deal with is only whether the balance amount, after adjusting `50 lacs, requires to be deposited or whether the assessee should be given some relief. In this regard, the circular of the Board mentions that if the assessee's case is covered, by some decision, it may not be even required to deposit any amount and that ordinarily in cases of such demand; the authority should direct deposit of 15%. There are other exceptions to this rule-notably that where there is decision in favour of the revenue, the assessee may be required to deposit a higher amount or an amount determined by the Commissioner. Having regard to all these circumstances, since it was not the assessee's case, that it is suffering from acute hardship the court is of the opinion that interests of justice would be best sub-served if the assessee deposits 50% of the entire tax, after giving credit to the amounts (Rs. 50 lacs) paid to the revenue. The balance amount with the differential between what is deposited and what is payable towards 50% of the entire demand would be paid within six weeks from today.

This order would not be construed as an expression on merits of the contentions of the parties.

The writ petition is disposed of in the above terms. No costs.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

SEPTEMBER 02, 2016
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