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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 8942/2015

SMART PROJECTS PVT.LTD.

..... Petitioner

Through: Dr. Rakesh Gupta with Ms. Poonam Ahuja, Mr. Somil Agarwal, Mr. Rohit Kumar Gupta and Ms. Monika Ghai, Advocates.

versus

INCOME TAX OFFICER, & ANR.

..... Respondents

Through: Mr. Ashok K. Manchanda, Senior Standing counsel.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE VIBHU BAKHRU

ORDER

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14.03.2016

CM No. 20081/2015 (for exemption)

1. Exemption allowed subject to all just exceptions.
2. The application is disposed of.

W.P.(C) 8942/2015 & CM No. 20080/2015 (for stay)

3. This is a petition by the Assessee, Smart Projects Pvt. Ltd. ('SPPL'), which is aggrieved by the proceedings initiated to recover the demand raised for the Assessment Year ('AY') 2012-13.

4. The background of the present petition is that the Petitioner which is assessed with Company Ward 24(1), New Delhi filed a return of income on 1st September 2012 showing an income of Rs. 1,24,110 for the AY 2012-13.

The assessment was completed by the Assessing Officer ('AO') by passing an assessment order dated 30th March 2015 under Section 143(3) of the Income Tax Act, 1961 ('Act') making an addition of Rs. 25 crores to the return income being unsecured loan from RKG Finvest Ltd and also by disallowing the interest of Rs. 27,40,000 paid under the said loan. The AO also made an addition of Rs.50 lakhs as commission that might have been paid on procuring the said loan. Consequently, a demand of Rs. 11,36,26,420 was raised by a demand notice dated 30th March 2015.

5. The appeal filed by the Petitioner against the aforementioned assessment order of the AO is pending before the Commissioner of Income Tax (Appeals) ['CIT (A)']-8, New Delhi. Although the said appeal was filed on 29th April 2015, it has not been disposed of till date. A stay application was filed before the AO on 5th May 2015 seeking a stay of the demand. This was rejected by the AO by a letter dated 4th August 2015. The AO made a reference to Instruction No. 1914 dated 2nd December 1993 issued by the Central Board of Direct Taxes ('CBDT') and held that a mere filing of appeal against the assessment order was not held to be a sufficient reason to stay the recovery of demand. On 24th August 2015, the AO issued notices to the Assessee's bank namely Axis Bank as well as to person to whom advances were made by the Assessee.

6. Meanwhile, the Petitioner filed an application dated 9th September 2015 before the Chief Commissioner of Income Tax ('CCIT') for an early date to be fixed in the appeal pending before the CIT (A). Reliance was placed on the decision in *Soul v. Deputy Commissioner of Income Tax (2010) 323*

ITR 305 (Del) where a stay was granted of the assessment “made at unreasonably high pitched figure” in light of Instruction No. 96 dated 21st August 1969 issued by the CBDT.

7. The present petition has been adjourned on three occasions. In the meanwhile on 7th August 2015, the Principal Commissioner of Income Tax (‘Pr CIT’) disposed of the Petitioner’s stay application directing that the Petitioner Assessee should pay a sum of Rs.1 crore in four instalments of Rs. 25 lakhs per month from November 2015 till February 2016 and that subject to such payment, no coercive steps should be taken by the AO for enforcing the demand. The AO was also directed to make a request to CIT (A) for early disposal of the appeal.

8. Dr. Rakesh Gupta, learned counsel for the Petitioner points out that the subsequent instruction of the CBDT dated 2nd December 1993 does not supersede the earlier Instruction No. 96 dated 21st August 1969 regarding an “unreasonably high pitched assessment order.” He submits that the Court may direct expeditious disposal of the appeal pending before the CIT (A) and stay the demand till such time the appeal is not disposed of.

9. Mr. Ashok K. Manchanda, learned Senior Standing counsel for the Revenue, on the other hand, urges that the order passed by the Pr CIT cannot be said to be an unreasonable one considering that the demand is for a sum of more than Rs.11 crores. He, however, has no objection if the appeal is directed to be disposed of expeditiously by the CIT (A).

10. In the present case with the return having been filed at an income of

Rs.1,24,110 and the income being computed as Rs.25,78,64,110, there is merit in the contention that it falls in the category of a high pitched demand. In *Soul v. DCIT* (supra), the Court noted that Instruction No. 1914 of 1993 does not alter the earlier Instruction No. 96 of 1969 and that one of the illustrations given in Instruction No. 96 of 1969 regarding an 'unreasonably high pitched demand' was an assessment if made at twice the amount of returned income. In those circumstances, the Court kept the impugned notices in abeyance till such time the CIT (A) did not dispose of the appeal.

11. Accordingly, the Court directs that as far as the present case is concerned, the appeal pending before the CIT (A) should be disposed of within a period of two months from today and in any event not later than 16th May 2016. Till such time, the impugned demand notice as well as any coercive steps taken pursuant thereto shall remain stayed. This is notwithstanding the order dated 7th October 2015 passed by the Pr CIT.

12. The writ petition and the application are disposed of in the above terms.

13. A copy of this order be given *dasti* under the signature of Court Master.

S. MURALIDHAR, J

VIBHU BAKHRU, J

MARCH 14, 2016/dn