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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **W.P.(C) 3630/2017 & CM No. 15965/2017 (for stay)**

FIIT JEE LIMITED ..... Petitioner
Through: Mr. Vishal Kalra, Mr. S.S. Tomar and Mr. Anil Bajaj, Advocates.

versus

PR. COMMISSIONER OF INCOME TAX & ANR. .... Respondents
Through: Mr. Rahul Kaushik, Senior Standing Counsel.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE CHANDER SHEKHAR

O R D E R
% **28.04.2017**

1. Notice. Mr. Rahul Kaushik, learned Senior Standing Counsel for the Respondents accepts notice.

2. The short question involved in this petition is whether the Assessing Officer ('AO') was justified in declining the Petitioner's prayer that the percentage of pre-deposit for stay of the demand created as a result of the assessment order dated 23rd December 2016 should be fixed at less than 15% in light of the Office Memorandum (OM) dated 29th February 2016.

3. The case of the Petitioner is that the AO erred in not accepting the Petitioner's adoption of the revenue recognition method for splitting the tuition fees collected by it from the students coming to its coaching institute

as 60% in the first year and 40% in the second. It is submitted that although this change occurred from the AY 2012-13 (and the year with which we are concerned is AY 2014-15), the revenue recognition method was accepted by the Income Tax Appellate Tribunal ('ITAT') in the Petitioner's own case for the earlier AYs 2007-08 and 2008-09.

4. Having heard learned counsel for the parties, the Court is of the view that the AO should have, in the impugned order, discussed para 4(B)(b) of the aforementioned OM which provides that wherein AO is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount lower than 15% is warranted that is in a case where addition on the same issue has been deleted by appellate authorities in earlier years, the AO should refer the matter to the administrative Pr.CIT/CIT, who shall then decide the quantum/proportion of the demand to be paid.

5. Instead of remanding the matter to the AO for the above exercise, the Court is of the view that the interests of justice will be met by requiring the Petitioner to deposit around 10% of the demand of Rs.17,57,53,977 as a lump sum amount. It is accordingly directed subject to the Petitioner depositing with the Income Tax Department a sum of Rs.1.75 crores not later than four weeks from today, the demand of Rs.17,57,53,977 by the assessment order for AY 2014-15 against the Petitioner shall remain stayed during the pendency of the appeal against the said order. The orders dated 8th February, 2017 and 27th February 2017 of the AO stand modified accordingly.

6. It is made clear that if the Petitioner fails to comply with the above condition then this order will no longer continue and in that event the abovementioned two orders of the AO will revive.

7. The petition and application are disposed of in the above terms. *Dasti*.

S. MURALIDHAR, J

CHANDER SHEKHAR, J

APRIL 28, 2017

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