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

+ W.P.(C) No. 11969/2016 & C.M. No. 47133/2016

KRISHAK BHARATI COOPERATIVE LIMITED Petitioner
Through: Ms. Surekha Raman, Advocate.

versus

THE ASSISTANT COMMISSIONER OF INCOME TAX
..... Respondent
Through: Mr. Ashok K. Manchanda with
Mr. Raghuendra Singh, Advocates.

**CORAM: JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH**

% **ORDER**
31.07.2017

1. On 21st December, 2016 following orders were passed:

“Issue notice. Mr. Ashok K. Manchanda, Senior Standing Counsel accepts notice.

The petitioner/applicant is aggrieved by an order dated 31.08.2016, which, in effect, supersedes an earlier order of 26.04.2016 that had granted stay of demand in respect of a sum of around Rs.23.8 crores. The total tax demands against the petitioners were about Rs.25.57 crores. Of this bulk - about Rs.23.8 crores constitute liability on account of the Revenue's original view that the transactions and amounts earned in Oman were taxable. The Income Tax Appellate Tribunal has ruled in favour of the assessee. Apparently, these

facts were taken into consideration while making the order of 26.04.2016. Thus of the balance, the Assessing Officer had proposed adjustments of Rs.1.77 crores against a larger sums outstanding and payable to the petitioner. Now, by the impugned order he has reversed his position and directed the entire refund amount as against the other dues and even superseded the earlier stay order. Prima facie this does not appear to be the correct legal position.

Consequently, the operation of the impugned order is stayed till the next date of hearing.

List on 27.03.2017.”

2. Today, learned counsel for the Petitioner has drawn the Court’s attention to the judgment dated 21st April, 2017 in ITA Nos. 578/2016 and 579/2016, ***Principal Commisisoner of Income Tax v. Krishak Bharati Cooperative Limited*** whereby for the Assessment Years (‘AY’) 2010-11 and 2011-12, this Court upheld the order of the Income Tax Appeallate Tribunal (‘ITAT’) to the effect that dividend income was taxable but exempt under Omani law and that the Assessee was entitled to the benefit of the Indo-Oman Double Taxation Avoidance Agreement (‘DTAA’).

3. Following the above order, the Commissioner of Income Tax (Appeals) [‘CIT(A)’] allowed the appeal filed by the assessee against the assessment order dated 28th March, 2016 of the Assessing Officer (AO) for AY 2012-13. Since the appeal itself has been disposed of by the CIT (A), the impugned interim order passed by the CIT (A) during the pendency of the appeal, which is the subject matter of challenge in the present petition,

obviously cannot continue.

4. In that view of the matter, the only direction that needs to be issued in the present petition is to direct the Revenue to give appeal effect to the order of the CIT(A) , subject to any appeal that may be filed by the Revenue against the said order. This observation should not be construed as a direction to the Revenue to file an appeal.

5. The refund amount, if any, should be credited to the account of the Petitioner, together with interest due thereon, not later than four weeks after the expiry of the period of limitation for filing the appeal.

6. The petition is disposed of in the above terms.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

JULY 31, 2017

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