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

\+ W.P.(C) 12252/2016

M/S JALANDHAR AMRITSAR TOLLWAYS LTD.

..... Petitioner

Through Mr. Ajay Vohra, Mr. Sumesh Dhawan and Ms. Tannya Baranwal, Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX

..... Respondent

Through Mr. Raghvendra Singh and Mr. Ashok Manchanda, Advs.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

<u>O R D E R</u>

% **10.01.2017**

1. The Assessee/petitioner challenges a garnishee order issued by the respondent i.e. the Income Tax authorities under section 226(3) of the Income Tax Act, 1961 (‘the Act’, for short) dated 13.12.2016.

2. The petitioner was assessed at a loss calculated at ₹ 98.80 crores for AY 2011-2012. By so deciding the Assessing Officer (AO) disallowed its depreciation claimed at higher rate. Based on those findings, the AO initiated penalty proceedings under section 271(1)(c) of the Act. The petitioner complains that penalty order was not preceded by proper hearing. It had sought for stay of demand but

suffered an adverse order on 29.01.2016. In the circumstances the impugned garnishee order was made. The petitioner complains that in view of the losses successively suffered for two succeeding years, especially when this appeal is pending before the CIT(A), the garnishee order will be oppressive. It is emphasised that the petitioner is facing severe liquidity crisis. The learned counsel for the Revenue resists the petition and contends that the petitioner never contested the rejection of its application for stay of demand. It is also highlighted that besides the demand for the quantified penalty, the garnishee order has included other amounts. The learned counsel also states that with respect to another order in regard to the same issue, the reduction of depreciation, the petitioner's appeal to the CIT(A) was unsuccessful. The material on record indicates that the petitioner was assessed in excess of ₹98.80 crore and ₹19.67 crore respectively for the two successive years.

3. Whilst the Revenue is correct in contending that the petitioner did not challenge the rejection of its stay application (made on 29.01.2016) and that it suffered an adverse order before the CIT(A) for another order, at the same time its appeal is pending before the CIT(A) on the merits of the penalty imposed.

4. In this peculiar circumstance this Court hereby directs the CIT(A) to decide the penalty appeal as expeditiously as possible, preferably within three months from today. In the meanwhile, the impugned garnishee order shall not be acted upon or any amount appropriated from it. It is at the same time clarified that the final

order in the penalty appeal by the CIT(A) will determine the fate of the garnishee order and the payment of outstanding dues against the petitioner. It is open to the CIT(A) to vary or to modify the demand having regard to the ultimate outcome of the appeal. The writ petition is partly allowed in the above terms.

5. Dasti.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

JANUARY 10, 2017/acm