$~177

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

\+ W.P.(C) 1459/2019 & CM Appl. 6694/2019

DELIHIVERY PRIVATE LIMITED ..... Petitioner

Through: Mr. Balbir Singh, Sr. Adv. with Mr.Prakash Kumar, Ms. Monica Benjamin & Ms. Rashmi Singh, Advs.

versus

ASSISTANT CMMISSIONER OF INCOME TAX CIRCLE-7(1), NEW DELHI & ORS...... Respondents

Through: Mr. Ruchir Bhati, Sr. Std. Counsel.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

O R D E R

% **13.02.2019**

CM Appl. 6695/2019 (exemption)

Exemption allowed, subject to all just exceptions.

The application is disposed of.

W.P.(C) 1459/2019 & CM Appl. 6694/2019

1. Issue notice. Mr. Ruchir Bhatia, Senior Standing Counsel accepts notice. The petition was heard finally.

2. The petitioner's grievance is that tax demand pursuant to the assessment completed for A.Y. 2016-17, - for ₹1,83,56,49,397/- was stayed only to the extent of 80% and it has been directed to deposit 20% of the demand by the impugned order. It is contended that the assessment is ex-facie, erroneous and untenable on two main grounds; i.e. the addition made under Section 68 and the denial of set off of losses for the previous years, on the ground of amendment to Section 115BBE.

3. Learned Senior Counsel for the petitioner urges that the amendment, in fact, became effective from A.Y. 2017-18 [w.e.f 01.04.2017]. Learned counsel for the Revenue urged that all grounds available to the petitioner can be urged before the Commissioner in its application, pending in this regard. This Court is of the opinion that the demand to the extent, based upon the denial of the claim for the set-off of losses, appears to be *prima facie* incorrect and therefore, untenable. The Court has been informed that if the loss adjustment sought was therefore permitted, the demands would reduce proportionately in the range of about ₹77 crores.

4. In these circumstances, the petitioner's appeal and contentions with respect to the merits of the assessment order as well as the Revenue's contentions are kept open. Upon the petitioner depositing 20% of the balance amount [after carrying out the adjustment which it claimed and proportionate reduction in tax demand] its appeal shall be heard by the CIT(A) and the balance demand shall be stayed. The Revenue should also adjust the refund amounts payable to the petitioner, if any, before pressing the demands.

5. These observations are only for the purposes of these proceedings, and the rights and contentions of the parties are kept open in the appeal.

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

Dasti.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

FEBRUARY 13, 2019

'pv'