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

\+ **W.P.(C) 2813/2019 & CM APPL. 13033/2019**

SHRI LAL MAHAL LTD. ..... Petitioner
Through: Mr. Gurmehar Sistani, Advocate with Mr. Shivansh Pandya, Advocate

versus

ADDL. COMMISSIONER OF INCOME-TAX. & ANR ..... Respondents
Through: Mr.Zoheb Hossain, Senior Standing Counsel for Revenue with Mr.Sunil Kumar Yadav, Additional CIT, Special Range 8.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE I.S.MEHTA

<u>O R D E R</u>
% 19.03.2019

1. The Petitioner challenges an order passed by the Principal Commissioner of Income-tax-08 (Respondent No.2) dated 28th February 2019 calling upon the Petitioner to pay the following outstanding demands immediately:

> "(i) 10 percent of demands disputed before the CIT (A). As directed by the Hon'ble High Court, Assessing Officer has submitted remand reports to the CIT (A) who is under the directions of the Hon'ble Court to dispose of pending appeals within six weeks. After the disposal of Assessee's pending appeals matter will be reviewed.
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> (ii) 100 percent of demand (including interest) pertaining to AY 2016-17 which is self admitted tax liability."

2. This is the second round of litigation. Earlier, the Petitioner had filed W.P.(C) 1707/2019 in this Court at a stage when its application for stay under Section 220 (6) before the Respondent No.2 was pending. While expediting the disposal of the appeals pending before the CIT (A), this Court by order dated 19th February 2019 disposed of the above writ petition by issuing the following directions as far as the question of stay of demand was concerned:

> "4. As far as the question of stay of demand is concerned, the Court is of the opinion that Principal Commissioner of Income Tax (PCIT) should first decide the application pending under Section 220(6) within ten days. During that time, the notices under Section 226(3) in question shall not be proceeded with and no coercive action shall be taken."

3. It is pursuant to the above order that the impugned order was passed by the Respondent No.2 on 28th February 2019.

4. The main plea of the Petitioner is that the above demand is too harsh particularly considering that the Petitioner is owed refunds by the Department. According to the Petitioner, a total refund in the sum of Rs.4,55,44,500 together with interest for the assessment years 1999-2000, 2002-2003 and 2003-2004 is due to the Petitioner and that if those refund amounts were to be adjusted then the Petitioner would not be required to deposit the sums as ordered by the Respondent No.2 by the impugned order dated 28th February 2019.

5. It is seen that the demand as per the Assessing Officer (AO) is to the tune

of Rs.55,97,78,708. In para 4 of the impugned order, in a tabular form, the details of these demands which have been raised from AY 2001-2002 onwards have been set out. For the AY 2016-17 the demand of Rs.10,07,79,190 includes self assessment tax of Rs.4,13,25,871/- plus interest of Rs.1,15,71,243/- totalling to Rs.5,28,97,115/-. This is on the Assessee's own admission the tax payable by it for AY 2016-17.

6. In para 7 of the impugned order, it is observed *inter alia* that according to the AO the Petitioner is carrying out business in the name of sister concerns and is also conducting business in cash outside of its books of account. A reference has also been made to the formation of front companies formed by the Assessee with the help of dummy directors to divert earnings.

7. Consequently the Respondent No.2 has in the impugned order directed deposit of the admitted tax liability before A.O. pertaining to AY 2016-17 and 10% of the remaining demand.

8. Mr. Gurmehar Sistani, learned counsel for the Petitioner, submits that the Petitioner is in a dire financial condition and since substantial amounts were due to it by the Respondent by way of refund, the above demand is too harsh.

9. As far as the refunds are concerned, it is a separate subject matter, which the Petitioner has to pursue in accordance with law. What the Court is concerned about here is the question of stay demand in relation to the appeals pending before the CIT (A). The limited scope is whether under

Section 226 (3) of the Income Tax Act, 1961, the above order requiring the Petitioner to pay 10% of the demand as a condition for stay of the total demand during the pendency of the appeals before the CIT (A) apart from the admitted liability for AY 2016-17 can be said to be unjustified?

10. Considering the demands raised against the Petitioner for various AYs from time to time and the total outstanding demand being Rs.55.97 crores, the Court is of the view that the impugned order requiring the Petitioner to pay 10% of the demand cannot be termed to be unreasonable.

11. Mr. Zoheb Hossein, learned Senior standing counsel for the Revenue, has shown the Court the copy of a demand dated 17th March 2017 raised by the Additional Commissioner of Income Tax on the Petitioner under Section 221 (1) which is 15% of all the disputed demands which form the subject matter of the appeals pending before the CIT (A). This has in fact been reduced to 10% by the impugned order of Respondent No.2.

12. Mr. Sistani for the Petitioner then drew attention of the Court to the notices dated 5th March 2019 issued to the trade debtors of the Petitioner under Section 226 (3) of the Act and prayed that those should be stayed pending the disposal of the appeal before the CIT (A).

13. The above notices issued are consequential upon the impugned order dated 28th February 2019. With the said order not calling for any interference, these notices also do not call for any interference.

14. The writ petition is accordingly dismissed and the application is also dismissed.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MARCH 19, 2019
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