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

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+ **W.P.(C) 4865/2019 & CM 21642/2019 (stay)**

ANUSHNA ESTATE PRIVATE LIMITED

..... Petitioner

Through: Mr Amitabh Kumar Verma, Advocate

versus

PRINCIPAL COMMISSIONER OF INCOME TAX,

HQRS -1 & ORS.

..... Respondents

Through: Ms Vibhooti Malhotra, Senior
Standing Counsel for Revenue.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

09.07.2019

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1.The challenge in the present petition is to the order dated 31st March, 2019 passed by the Income Tax Officer (Headquarters) –I, New Delhi rejecting the request for stay of the demand of Rs. 5,00,04,435/- by the assessment order dated 24th December, 2018 passed under Section 143 (3) of the Income Tax Act, 1961 (‘Act’) for the Assessment Year (‘AY’) 2016-17 as well as the order dated 18th February, 2019 passed by the Additional Commissioner Income Tax, Range-2, New Delhi requiring the Petitioner to deposit 20% of the outstanding demand on or before 22nd February, 2019 as a condition for stay of the demand.

2. It requires to be noted that against the above assessment order, the Petitioner has filed an appeal which is pending before the Commissioner of

Income Tax (Appeals) [‘CIT(A)’]. As far as the application for stay of demand pending disposal of the appeal by the CIT (A) is concerned, the Additional Commissioner of Income Tax has in the order dated 18th February, 2019 observed that in view of the Instruction No. 1914 dated 2nd December, 1993, as modified on 29th February, 2016 and 31st July, 2017, the Petitioner is required to deposit 20% of the outstanding demand. This works out to be Rs.1 crore.

3. As rightly pointed out by learned counsel for the Revenue, nowhere in the application for stay of the demand has the Petitioner made out a case of genuine hardship and inability to meet the above condition of making a deposit of 20% of the demand.

4. Learned counsel for the Petitioner sought to rely on the judgment of this Court dated 24th February, 2009 in W.P.(C) No.6956/2009 (*Taneja Developers & Infrastructure Ltd. v. Assistant Commissioner of Income Tax, Delhi*) which in turn referred to the decision of this Court in *Valvoline Cummins Ltd. v. DCIT [2008] 307 ITR 103 Delhi*. It was noted therein that only in ‘exceptional circumstances’ could the discretion of the Assessing Officer (‘AO’) be interfered with by the superior authority. These were noted as:

- “(i) Where the assessment order is unreasonably high-pitched; or
- (ii) Where a genuine hardship is likely to be caused to the Assessee”.

5. What would constitute as being “unreasonably high-pitched”, obviously differs from case to case. In the facts and circumstances of the present case, the Petitioner had to necessarily demonstrate that the Petitioner was

suffering genuine hardship in complying with the requirement of depositing 20% of the demand created as a result of the high-pitched assessment. The Petitioner has failed to do so. The question whether the assessment is in fact unreasonably high-pitched, would obviously have to await the decision in the appeal pending before the CIT (A).

6. Since the Petitioner has failed to make out a case of genuine hardship for stay of the demand, the Court finds no reason to interfere with the impugned order. The petition is accordingly dismissed. The pending application is also disposed of. No costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 09, 2019

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