

07.09.2021
p.b.
Sl. No.143.

W.P.A. 3808 of 2020

Subhendu Nandy
Vs.
Union of India & Anr.

(Via Video Conference)

Mr. Sayantan Bose,
Ms. Anyapurba Banerjee.
.....for the petitioner.
Mr. P. K. Bhaumick.
.....for the respondents.

Affidavit-of-service filed in court be kept on the record.

Heard learned advocates appearing for the parties.

In this matter, petitioner has challenged the impugned order dated 7th February, 2020 passed by the Assessing Officer concerned rejecting the application of the petitioner for stay of demand in question arising out of the assessment year relating to 2017-18 on the ground that the Assessing Officer has misinterpreted the instruction of the CBDT No.1914 dated 21st March,1996 read with modification dated 29th February, 2016 and 31st July, 2017 by insisting upon the petitioner to pay 20% of the outstanding demand before filing the first appeal. Petitioner tries to take advantage of technical mistake committed by the Assessing Officer by recording that the

assessee should pay 20% of the outstanding demand before filing first appeal, though the aforesaid instruction does not specifically say that 20% of the outstanding demand should be paid by the assessee before filing first appeal, but, fact remains that the circular says that the Assessing Officer shall grant stay of the demand if 20% of the outstanding demand is paid, though it does not specifically say that it has to be paid as predeposit of the filing of appeal. Though language of the Assessing Officer is not proper but, as per the aforesaid notification, discretion has been given to the Assessing Officer to grant stay of demand in question till the disposal of the first appeal on payment of the 20% of the outstanding demand.

Considering the submissions of the parties and discussions made above, I dispose of this writ petition by passing the order that demand in question will not be given effect to by the respondent Assessing Officer till the disposal of the pending appeal in question before the CIT (Appeals) concerned if 20% of the demand in question is paid by the assessee petitioner within three weeks from date. In case of default in making payment of the 20% of the demand in question within the time stipulated above, the Assessing Officer concerned will be free to take action for recovery against the petitioner in accordance with law. Learned CIT (Appeals) is requested to expedite the appeal.

In the light of the observation made above, this writ petition being WPA No.3808 of 2020 is disposed of.

(Md. Nizamuddin, J.)