31.08.2021
p.b.
Sl. No.141.

W.P.A. 5162 of 2020

Debasish Dey
Vs.
Union of India & Ors.

(Via Video Conference)

Mr. Arun Kumar Upadhyay.
.......for the petitioner.
Mr. Y. J. Dastoor,
Mr. M. N. Bandyopadhyay,
Mr. Madhu Jana.
.......for the respondent.

In this matter, petitioner has challenged the impugned order of rejection dated 20th February, 2020 of the petitioner's application for stay of demand in question under Section 143(3) of the Income Tax Act relating to the assessment order dated 27th December, 2019, passed by the Assessing Officer, on the ground that the appeal of the petitioner is pending before the Commissioner of Income Tax (Appeal) by making 10% of demand in question and also on the ground that the aforesaid impugned order of rejection dated 20th February, 2020 is a non-speaking order. The petitioner relies on one unreported decision of the Hon'ble Supreme Court in support of his contention that it will be open to the authorities on the facts of the individual cases to grant deposit orders of a lesser amount of 20% while in the impugned order dated 20th February, 2020 the Assessing Officer has straight-way rejected the prayer of the petitioner on the ground that he has failed to deposit the statutory amount of 20% demand and without discussing on facts of the case or for justification for insisting on payment of 20% of the demand. The relevant portion of the order of the Hon'ble Supreme Court dated 20th July, 2018 in Civil Appeal No.6850 of 2018 in the case of Principal Commissioner of Income Tax 5 & Ors. Vs. M/s. LG Electronics India Pvt. Ltd. upon learned advocate for the petitioner has relied is hereunder:-

"Having heard Shri Vikramjit Banerjee, learned ASG appearing on behalf of the appellant, and giving credence to the fact that he has argued before us that the administrative circular will not operate as a fetter on the Commissioner since it is a quasi judicial authority, we only need to clarify that in all cases like the present, it will be open to grant deposit orders of a lesser amount than 20%, pending appeal."

Considering the submission of the parties, the impugned order of rejection of stay petition of the petitioner dated 20th February, 2020 relating to demand in question is set aside with a direction upon the respondent no.3/ Assessing Officer to consider afresh the case of the petitioner for stay of demand in question by passing a reasoned and speaking order after giving an opportunity of hearing to the petitioner or its auhorised representatives and after taking into consideration the aforesaid order of the Hon'ble Supreme Court dated 20th July, 2018 as appears at page 33 of the writ petition within eight weeks from the date of communication of this order. It is recorded that this Court has not gone into the merit of the case of the petitioner and the Assessing Officer is free to decide application for stay of demand on merit as per observation made in this order.

Learned CIT (Appeals) is requested to expedite the pending appeal in question.

Since this writ petition is disposed of without calling for affidavits, allegations contained in the writ petition shall be deemed to have been denied by the respondents.

The writ petition being WPA No.5162 of 2020 is disposed of.

(Md. Nizamuddin, J.)