S/L 2
13.4.2021
Court No.26
SD

WPA 11783 of 2020
(Via Video Conference)

Swapan Kumar Barik
Vs.
Union of India & Ors.

Mr. Joyak Kumar Gupta
Mr. Nandadulal Bandyopadhyay
... for the Petitioner.
Mr. Dhiraj Trivedi
Mr. Manabendranath Bandyopadhyay
Mr. B.K. Singh
... for the State.

1. This is an application under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by an order dated November 27, 2020 passed by the Income Tax Officer, Ward 22(2), Kolkata asking the petitioner to deposit 20% of the disputed demand for stay of recovery of demand.

2. The petitioner submits that a total demand for Rs.80,72,547/- has been raised vide an order dated November 14, 2019. His contention is that he did not receive notice of the best judgment assessment and therefore, could not appear before the Officer. He further submits that he has filed an appeal under Section 246 of the Income Tax Act, 1961 and prayed for stay.

3. The petitioner submits that by way of an attachment a sum of Rs.5,61,634/- has been recovered by the Income Tax Department. He submits that he is unable to pay such a

huge amount of 20% of the demand which according to him is illegal.

4. Counsel appearing on behalf of the petitioner further prays that his appeal be heard in a time bound manner and he is willing to deposit a total of 10% of the demand.

5. In light of the above submissions, I direct the bank officials wherein the bank account has been attached to transfer Rs.5,61,634/- to the Income Tax Department and further direct the petitioner to pay a balance of approximately Rs.2.4 lakhs so that a total amount aggregating to 10% of the disputed demand goes into the account of the Income Tax Department.

6. Upon such payment being made by the petitioner within a period of four weeks from date, the CIT (Appeal) is directed to hear out the appeal of the petitioner within a period of ten weeks from the date of receipt of the above amount, after granting an opportunity of hearing to the petitioner.

7. It is to be noted that this order has been passed in light of the fact that the petitioner had not appeared before the Income Tax Officer and best assessment order was passed *ex parte*.

8. With these above observations and directions, this writ petition stands disposed of.

9. Since, no affidavit-in-opposition has been called for the allegations made in the writ petition are deemed to have not been admitted by the respondents.

10. There will be no order as to costs.

11. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Shekhar B. Saraf, J.)