

\$~7&8

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

+ **W.P.(C) 6172/2021 & CM APPL. 19561/2021**

SKYLINE ENGINEERING CONTRACTS(INDIA) PRIVATE LIMITED

..... Petitioner

Through: Mr.Salil Aggarwal, Sr. Adv. With
Mr. Madhur Aggarwal, Advocate.

versus

**DEPUTY COMMISSIONER OF INCOME TAX CIRCLE-
22(2),DELHI & ORS**

..... Respondents

Through: Mr. Sunil Agarwal, Sr. Standing
Counsel.

AND

+ **W.P.(C) 6200/2021 & CM APPL. 19634/2021**

SKYLINE ENGINEERING CONTRACTS(INDIA) PRIVATE LIMITED

..... Petitioner

Through: Mr.Salil Aggarwal, Sr. Adv. With
Mr. Madhur Aggarwal, Advocate.

versus

**DEPUTY COMMISSIONER OF INCOME TAX CIRCLE-
22(2),DELHI & ORS**

..... Respondents

Through: Mr. Sunil Agarwal, Sr. Standing
Counsel.

%

Date of Decision: 23rd August, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

MANMOHAN, J: (Oral)

1. The appeals have been heard by way of video conferencing.
2. The matter has been taken up for hearing today as 20th August, 2021 was declared a holiday.
3. Present writ petitions being W.P.(C) 6172/2021 and 6200/2021 have been filed seeking virtually similar reliefs. The prayers sought in one of the writ petition being W.P.(C) 6200/2021 are reproduced herein below:-

“a) to issue a writ of mandamus or any appropriate writ or an order directing the respondents to return/refund an amount of Rs. 2,24,50,412/- plus interest to the petitioner which was recovered in excess of 20% of the total disputed demand for the assessment year 2015-16;

b)

c)

d) to issue directions to the Respondent No.2 to hear the appeal relating to assessment year 2015-16 and dispose of the same expeditiously;

e)”

4. On 07th July, 2021, the learned predecessor Division Bench had passed the following order in W.P.(C) No.6200/2021:-

“CM No.19635/2021

1. The prayer made in the captioned application is to grant exemption from filing attested affidavits along with the present petition. The prayer made in the captioned application is allowed, subject to the petitioner placing on record the duly attested affidavits, within three days of the Court resuming its normal and usual work pattern.

CM No.19636/2021

2. Allowed, subject to just exceptions.

W.P.(C) 6200/2021 & CM No.19634/2021[Application filed on behalf of the petitioner seeking interim relief]

3. *It is the contention of Mr. Salil Aggarwal, learned senior counsel, who appears on behalf of the petitioner, that even while the petitioner's appeal, against the assessment order dated 23.12.2018, passed by the Assessing Officer under Section 143(3) of the Income Tax Act, 1961 is pending consideration before the Commissioner of Income Tax (Appeals) [in short "CIT(A)"], a substantial amount has been recovered from the petitioner, which is, an act, contrary to the Office Memorandum issued by the Central Board of Direct Taxes (in short "CBDT"), dated 31.07.2017, that prescribes payment of 20% of the disputed demand if the demand is contested before CIT(A) (See: Annexure-12, which is appended at page 134 of the paper book).*

4. *Mr. Salil says that, pursuant to the assessment order, dated 28.12.2017, which concerns the assessment year (AY) 2015-2016, against the total demand amounting to Rs.3,37,95,120/-, Rs.2,92,09,436/- has been recovered till now. Mr. Salil states that the amount recovered, in percentage terms, is 86.43%.*

5. *Accordingly, issue notice to the respondents. Mr. Sunil Agarwal accepts notice on behalf of the respondents/revenue.*

6. *Mr. Agarwal says that he will revert with instructions. In case instructions are received to resist the writ petition, a counter-affidavit will be filed before the next date of hearing.*

7. *Till the next date of hearing, subject to the verification of the aforesaid figures, status quo will be maintained qua further recovery (ies).*

8. *List the matter on 02.08.2021."*

5. Today, Mr. Sunil Aggarwal, learned counsel for Revenue states that he would like to argue the matters without filing any counter affidavits. Accordingly, the matters are taken up for hearing.

6. Learned counsel for the petitioner submits that as per the binding directions issued by the CBDT, the respondent was obliged to grant a stay on recoveries of outstanding demands for the Assessment Years 2015-16 and 2016-17 to the petitioner upon recovery of 20%, as appeals challenging the assessment orders are pending adjudication before the Commissioner of Income Tax (Appeals). The relevant portion of the office memorandum dated 29th February, 2016, as amended by office memorandum dated 25th August, 2017 and relied upon by learned counsel for the petitioner are reproduced hereinbelow:-

Office memorandum dated 29th February, 2016

“ 4. In order to streamline the process of grant of stay and standardize the quantum of lump sum payment required to be made by the assessee as a pre-condition for stay of demand disputed before CIT (A), the following modified guidelines are being issued in partial modification of Instruction No. 1914:

(A) In a case where the outstanding demand is disputed before CIT (A), the assessing officer shall grant stay of demand till disposal of first appeal on payment of 15% of the disputed demand, unless the case falls in the category discussed in para (B) hereunder.

Office memorandum dated 25th August, 2017

“Vide Board's O.M. of even number dated 31.7.2017, modifications were made to O.M. NO.404/72/93-ITCC dated 29-2-2016, to the effect that the standard rate prescribed in O.M. dated 29-2-2016 stood revised to 20% of the disputed demand, where the demand was contested before CIT(A).”

7. Per contra, Mr. Agarwal, learned standing counsel for the respondents/Revenue states that Assessing Officer vide order dated 31st July, 2021 had directed CPC Bangalore not to adjust any further refund in future against the demand raised by way of the impugned assessment orders. He also states that the Assessing Officer has separately requested the

Commissioner Income Tax (Appeals) [now 'National Faceless Appeal Centre'] to decide the appeals filed by the petitioner as expeditiously as possible.

8. Mr. Agarwal also refers to paragraph 4(B) of the office memorandum dated 29th February, 2016 which states that pre-deposit of 20% is not a rule of thumb and the respondents have the discretion to direct a set off of a higher sum under Section 245 of the Act. Paragraph 4(B) of the office memorandum dated 29th February, 2016 is reproduced herein below:-

Office memorandum dated 29th February, 2016

4(B) In a situation where,

(a) the assessing officer is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount higher than 15% is warranted (e.g. in a case where addition on the same issue has been confirmed by appellate authorities in earlier years or the decision of the Supreme Court or jurisdictional High Court is in favour of Revenue or addition is based on credible evidence collected in a search or survey operation, etc.) or,

(b) the assessing officer is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount lower than 15% is warranted (e.g. in a case where addition on the same issue has been deleted by appellate authorities in earlier years or the decision of the Supreme Court or jurisdictional High Court is in favour of the assessee, etc.), the assessing officer shall refer the matter to the administrative Pr. CIT/CIT, who after considering all relevant facts shall decide the quantum/proportion of demand to be paid by the assessee as lump sum payment for granting a stay of the balance demand.

9. Having heard learned counsel for the parties, this Court is of the view that the Government is bound to follow the rules and standards they themselves had set on pain of their action being invalidated. [See: ***Amarjit Singh Ahluwalia Vs. State of Punjab & Ors.; 1975 (3) SCR 82 and***

Ramana Dayaram Shetty vs. International Airport Authority of India & Ors. 1979 SCR (3) 1014].

10. This Court is also of the view that the office memorandum dated 29th February, 2016 read with office memorandum dated 25th August, 2017 stipulate that the Assessing Officer shall normally grant stay of demand till disposal of the first appeal on payment of 20% of the disputed demand. In the event, the Assessing Officer is of the view that the payment of a lump sum amount higher than 20% is warranted, then the Assessing Officer will have to give reasons to show that the case falls in para 4(B) of the office memorandum dated 29th February, 2016.

11. This Court finds that in the present matters no order has been passed by the Assessing Officer under Section 245 of the Act for adjustments of refunds. Moreover, there is no order by the Assessing Officer giving any special/particular reason as to why any amount in excess of 20% of the outstanding demand should be recovered from the petitioner-assessee at this stage in accordance with paragraph 4(B) of the office memorandum dated 29th February, 2016.

12. Consequently, this Court is of the view that the respondents are entitled to seek pre-deposit of only 20% of the disputed demand during the pendency of the appeals in accordance with paragraph 4(A) of the office memorandum dated 29th February, 2016, as amended by the office memorandum dated 25th August, 2017.

13. Accordingly, the respondent no.1 is directed to refund the amount adjusted in excess of 20% of the disputed demand for the Assessment Years 2015-16 and 2016-2017 within four weeks.

14. With the aforesaid directions, the present writ petitions along with pending applications stand disposed of.

15. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

NAVIN CHAWLA, J

**AUGUST 23 , 2021
AS**

