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

+ W.P.(C) 10145/2021 & CM APPL. 31296/2021

RELIGARE FINVEST LIMITED

..... Petitioner

Through Mr. Rohit Jain with
Mr. Aniket D Agrawal,
Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX

..... Respondent

Through Mr. Sunil Agarwal, Sr. Standing
Counsel with Mr. Tushar
Gupta, Jr. Standing Counsel and
Mr. Samarth Chaudhari,
Advocate.

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+ W.P.(C) 10149/2021 & CM APPL. 31302/2021

RELIGARE FINVEST LIMITED

..... Petitioner

Through Mr. Rohit Jain with
Mr. Aniket D Agrawal,
Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX

..... Respondent

Through Mr. Sunil Agarwal, Sr. Standing
Counsel with Mr. Tushar
Gupta, Jr. Standing Counsel and
Mr. Samarth Chaudhari,
Advocate.

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Date of Decision: 14th September, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

MANMOHAN, J. (Oral)

The hearing has been done by way of video conferencing.

1. Present writ petitions have been filed seeking refund of the Income Tax (including interest) adjusted in excess of 20% of the disputed tax demand arising in the case of the Petitioner for the assessment years 2016-17 and 2017-18 against the refunds due for the Assessments Years 2018-19 and 2019-20 along with the applicable interest. Petitioner also seeks direction to the respondent to dispose of the application dated 10th July, 2020 filed by the Petitioner under Section 154 of the Income Tax Act, 1961 [for short 'the Act'] seeking rectification of the assessment order dated 17th June, 2020 for the Assessment Year 2016-17.
2. Learned counsel for the petitioner states that under Section 220(6) of the Act, the Assessing Officer has been conferred with the power to grant stay on recovery of outstanding tax demand subject to fulfillment of appropriate conditions. He states that in order to provide guidance and lay down principles regarding stay of demand, the Central Board of Direct Taxes has issued various Circulars/ Notification from time to time including Office Memorandums dated 29th February, 2016 and 31st July, 2017, prescribing that in cases

where an assessee challenges the additions/ disallowances made in the assessment order by way of an appeal before the first appellate authority, i.e., CIT(A), and during pendency thereof deposits 20% of the total disputed outstanding tax demand, the assessing officer is empowered to grant stay of recovery of the balance outstanding demand.

3. Learned counsel for the petitioner submits that upon payment/ recovery of the standard rate of 20% of the disputed outstanding tax demand, the assessing officer is mandated to grant stay on recovery of the balance disputed outstanding tax demand till disposal of first appeal of the assessee, unless the case of the assessee falls in the category discussed in paragraph (B) of the Office Memorandum dated 29th February, 2016.

4. He states that the Income Tax Department in violation of the Office Memorandums dated 29th February, 2016 and 31st July, 2017, recovered the disputed outstanding tax demand in excess of 20% by way of adjustment of refunds due for assessment years 2018-19 and 2019-20. He states that while 20% of the disputed amount for the Assessment Year 2016-17 was Rs. 10,50,36,036/- the respondent adjusted the entire tax demand of Rs. 54,20,04,981/- excluding the interest under Section 220(2) of the Act. He also states that while 20% of the disputed amount for the Assessment Year 2017-18 was Rs. 48,54,63,006/- the respondent recovered Rs. 54,99,73,789/-.

5. Learned counsel for the petitioner relies on the judgment dated 03rd August, 2021 passed by this Court in ***Eko India Financial Services Pvt Ltd vs. ACIT, WP(C) No.5819/2021*** wherein under

similar circumstances the Respondents were directed to refund the amounts collected in excess of 20% of the disputed outstanding taxes to the Petitioner therein.

6. Issue notice.

7. Mr. Sunil Agarwal, learned counsel for the Revenue accepts notice. He states that he has not been able to receive instructions.

8. On perusal of the paper book, this Court finds that the issue raised in the present writ petitions is no longer *res integra*. This Court in ***Eko India Financial Services Pvt Ltd.*** (supra) has in a similar facts held as under:-

“....10.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].

11.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.

12.This Court finds that the order under Section 245 of the Act for adjustments of refunds as well as the order on stay of demand under Section 220(6) of the Act do not give 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. Consequently, this Court is of the view that the respondent is entitled to seek pre-deposit of only 20% of the disputed demand during the pendency of the appeal 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 Year 2017-18, within four weeks....”

9. Keeping in view the aforesaid mandate of law as well as the fact that refunds have been adjusted against outstanding tax demand by the Authority without following the procedure prescribed under Section 245 of the Act inasmuch as no notice or opportunity of pre-decisional hearing had been provided to the petitioner prior to such adjustment of refund, this Court is of the opinion that the petitioner is entitled to refund of adjustments made in excess of 20% of the disputed tax demands.

10. Consequently, this Court directs the respondent to verify the facts stated in the two writ petitions and if it finds them to be true and correct then to refund the amount adjusted in excess of 20% of the disputed tax demands for the Assessment Years 2016-17 and 2017-18 to the Petitioner within eight weeks. The respondent is also directed to dispose of petitioner's rectification application dated 10th July, 2020 seeking rectification of the assessment order dated 17th June, 2020 for Assessment Year 2016-17 within eight weeks.

11. Accordingly, in view of the above, the present writ petitions and application stand disposed of

12. 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

SEPTEMBER 14, 2021
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