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

+ **W.P.(C) 13453/2021 & CM APPLs. 42385-386/2021**

M/S AFFLATUS INTERNATIONAL

..... Petitioner

Through: Mr.Rajesh Mahana, Advocate with
Mr.Vikram Kakkar, Mr.Mayank
Kouts and Mr.Akshay Bhatia,
Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 28(1)
& ORS. Respondents

Through: Mr.S.C.Pratyaksh Gupta, Advocate
for R-1to3.

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Date of Decision: 29th November, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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29.11.2021

MANMOHAN, J. (Oral)

1. Present writ petition has been filed by the Petitioner seeking a direction to the Respondents to refund the excess tax collected amounting to Rs.1,43,23,653/- for the Assessment Year 2020-21 and Rs. 53,85,886/- for the Assessment Year 2018-19 forthwith
2. Learned counsel for the Petitioner states that the Respondents have arbitrarily recovered 100% of the high-pitched disputed tax demand raised against the Petitioner for Assessment Year 2017-18 in an assessment framed under Section 143(3) of the Act from the Refund(s) under Section 143(1) in

subsequent years i.e. Rs.1,43,23,653/- for Assessment Year 2020-21 and Rs.53,85,886/- for Assessment Year 2018-19. He states that this was done despite an application seeking stay of recovery of demand being made by the Petitioner in the pending appeal before the CIT(A). He also states that the adjustment was initiated without adhering to the mandatory requirement of issuance of notice to the Petitioner before an adjustment of refund under Section 245 of the Income Tax Act, 1961.

3. Learned counsel for the Petitioner points out that the recovery of the entire additional demand for Assessment Year 2017-18 against refunds of years 2020-2021 and 2018-19 is contrary to CBDT office memorandum dated 31st July 2017 which directs stay on recovery of demand upon deposit of 20% of the outstanding demand where an appeal is pending before the CIT(A).

4. Issue notice. Mr.SC Praty, learned counsel for respondents accepts notice. He, on instructions, states that the amount adjusted in excess of 20% demand in accordance with the CBDT Office Memorandum dated 31st July, 2017 shall be refunded to the petitioner within eight weeks.

5. The statement/undertaking given by learned counsel for respondents is accepted by this Court and the respondents are held bound by the same. In view thereof, the present writ petition along with pending applications stands disposed of as satisfied.

MANMOHAN, J

NAVIN CHAWLA, J

NOVEMBER 29, 2021/TS