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

+ W.P.(C) 14536/2021 & CM APPLs.45715-716/2021 and 47343/2021

M/S RAMESTH CONSTRUCTIONS PVT. LTD. Petitioner
Through: Mr. Avinash Trivedi, Advocate

versus

DEPUTY COMMISSIONER OF
INCOME TAX CIRCLE-19 (1) DELHI & ORS. Respondents
Through: Mr. Sunil Agarwal, Advocate

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Date of Decision: 05th January, 2022

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

MANMOHAN, J (Oral):

1. Matter has been heard by way of video conferencing.
2. Present writ petition has been filed seeking refund of Rs.1,66,35,954/- which was recovered in excess of 20% of the total disputed tax demand for the Assessment Year 2013-14 against the refunds due for various Assessment Years. Petitioner also seeks directions to the Respondents to hear and dispose of the appeal filed against the order dated 28th March, 2016 under Section 143(3) of the Income Tax Act, 1961 [for short 'the Act'].
3. 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/ Notifications 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.

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 the disposal of first appeal of the assessee, unless the case of the assessee falls in the category mentioned in paragraph (B) of the Office Memorandums dated 29th February, 2016 and 31st July, 2017. He states that the Respondents in violation of the provisions of the Office Memorandums recovered the disputed outstanding tax demand in excess of 20% by way of adjustment of refunds due for subsequent assessment years.

He states that while 20% of the disputed amount for the Assessment Year 2013-14 was Rs.47,13,706/- (20% of Rs. 2,35,68,530/-), the respondent adjusted Rs. 2,13,49,060/- being 90.58% of the demand.

Issue notice.

Mr. Sunil Agarwal, learned counsel accepts notice on behalf of the respondents. He states that he has the following instructions from the Assessing Officer which he has screen shared and which is reproduced as



under:-

“Sir,

Kindly refer to the trailing mail vide which the said matter was allocated to you to defend the case before Hon’ble Delhi High court.

The issue raised in this case is refund of excess amount deducted in excess of 20% of the outstanding demand.

In this regard, it is submitted that as per system, there is no provision for refund of excess amount (20% of outstanding demand) recovered, but the same can be refunded through manual refund in light of ITBA assessment instruction no.11 on the direction of Hon’ble Court.

In view of the above, it is requested to pray accordingly before the Court during the course of hearing on next date.

Regards,

*(Sunil Prakash)
Assistant Commissioner of Income Tax,
Circle-19(1), New Delhi.”*

This Court is of the view that the issue raised in the present writ petition is no longer *res integra*. This Court in ***Skyline Engineering Contracts (India) Pvt. Ltd. v. Deputy Commissioner of Income Tax Circle 22(2), W.P.(C) 6172/2021*** and other connected matters, has in similar facts held as under:-

“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 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.

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 Year 2017-18, within four weeks.....”



4. 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 invoking Section 245 of the Act and/or without following the due procedure prescribed under the said Section 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.

5. Consequently, this Court directs the respondents to verify the facts stated in the writ petition and if it finds them to be true and correct then refund the amount adjusted in excess of 20% of the disputed tax demands for the Assessment Year 2013-14 to the petitioner within four weeks.

6. With the aforesaid direction, present writ petition and application stand disposed of.

MANMOHAN, J

NAVIN CHAWLA, J

JANUARY 5, 2022

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