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

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+ **W.P.(C) 15850/2022 & C.M.Nos.49302-49303/2022**

M/S DABUR INDIA LIMITED

..... Petitioner

Through: Mr.M.P.Rastogi with Mr.Manu
K.Giri and Mr.K.N.Ahuja, Advocates.

versus

COMMISSIONER OF INCOME TAX (TDS) AND ANOTHER

..... Respondents

Through: Mr.Puneet Rai, Sr.Standing Counsel
for the Revenue with Ms.Adeeba
Mujahid, Advocate.

27

+ **W.P.(C) 15851/2022 & C.M.Nos.49305-49306/2022**

M/S DABUR INDIA LIMITED

..... Petitioner

Through: Mr.M.P.Rastogi with Mr.Manu
K.Giri and Mr.K.N.Ahuja, Advocates.

versus

COMMISSIONER OF INCOME TAX (TDS) AND ANOTHER

..... Respondents

Through: Mr.Puneet Rai, Sr.Standing Counsel
for the Revenue with Ms.Adeeba
Mujahid, Advocate.

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+ **W.P.(C) 15878/2022 & C.M.Nos.49436-49437/2022**

M/S DABUR INDIA LIMITED

..... Petitioner

Through: Mr.M.P.Rastogi with Mr.Manu
K.Giri and Mr.K.N.Ahuja, Advocates.

versus

COMMISSIONER OF INCOME TAX (TDS) AND ANOTHER

..... Respondents

Through: Mr.Puneet Rai, Sr.Standing Counsel
for the Revenue with Ms.Adeeba
Mujahid, Advocate.

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+ **W.P.(C) 15879/2022 & C.M.Nos.49438-49439/2022**

M/S DABUR INDIA LIMITED Petitioner

Through: Mr.M.P.Rastogi with Mr.Manu
K.Giri and Mr.K.N.Ahuja, Advocates.

versus

COMMISSIONER OF INCOME TAX (TDS) AND ANOTHER

..... Respondents

Through: Mr.Puneet Rai, Sr.Standing Counsel
for the Revenue with Ms.Adeeba
Mujahid, Advocate.

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+ **W.P.(C) 15880/2022 & C.M.Nos.49440-49441/2022**

M/S DABUR INDIA LIMITED Petitioner

Through: Mr.M.P.Rastogi with Mr.Manu
K.Giri and Mr.K.N.Ahuja, Advocates.

versus

COMMISSIONER OF INCOME TAX (TDS) AND ANOTHER

..... Respondents

Through: Mr.Puneet Rai, Sr.Standing Counsel
for the Revenue with Ms.Adeeba
Mujahid, Advocate.

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+ **W.P.(C) 15881/2022 & C.M.Nos.49442-49443/2022**

M/S DABUR INDIA LIMITED

..... Petitioner

Through: Mr.M.P.Rastogi with Mr.Manu
K.Giri and Mr.K.N.Ahuja, Advocates.

versus

COMMISSIONER OF INCOME TAX (TDS) AND ANOTHER

..... Respondents

Through: Mr.Puneet Rai, Sr.Standing Counsel
for the Revenue with Ms.Adeeba
Mujahid, Advocate.

35

+ **W.P.(C) 15892/2022 & C.M.Nos.49470-49471/2022**

M/S DABUR INDIA LIMITED

..... Petitioner

Through: Mr.M.P.Rastogi with Mr.Manu
K.Giri and Mr.K.N.Ahuja, Advocates.

versus

COMMISSIONER OF INCOME TAX (TDS) AND ANOTHER

..... Respondents

Through: Mr.Puneet Rai, Sr.Standing Counsel
for the Revenue with Ms.Adeeba
Mujahid, Advocate.

40

+ **W.P.(C) 15912/2022 & C.M.Nos.49534-49535/2022**

M/S DABUR INDIA LIMITED

..... Petitioner

Through: Mr.M.P.Rastogi with Mr.Manu
K.Giri and Mr.K.N.Ahuja, Advocates.

versus

COMMISSIONER OF INCOME TAX (TDS) AND ANOTHER

..... Respondents

Through: Mr.Puneet Rai, Sr.Standing Counsel
for the Revenue with Ms.Adeeba
Mujahid, Advocate.

Date of Decision: 18th November, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J:

1. Present writ petitions have been filed challenging the order dated 26th October, 2022 dismissing the Petitioner's application for stay of demand and directing the Petitioner to pay 20% of the total outstanding demand by 10th November, 2022. Petitioner also seeks stay of the demands raised by virtue of the orders dated 4th August, 2021 and 8th September, 2020 passed by Respondent No. 2 under Section 201/201(1A) of the Income Tax Act, 1961 ['the Act'] for Assessment Years [AY] 2013-14 to 2020-21 till the disposal of the appeals filed before the Commissioner of Income Tax (Appeals).
2. Learned counsel for the Petitioner states that the Respondent No. 2 passed orders dated 4th August, 2021 and 08th September, 2020 under Section 201/201(1A) of the Act holding that the Petitioner is an "assessee in default" on account of non-deduction of TDS under Section 194H of the

Act with respect to cost of free samples/goods given by the Petitioner under sales promotion scheme to the stockists thereby treating the cost of items of free samples given under sales promotion scheme as brokerage/commission under Section 194H of the Act. He states that a demand of Rs. 17,65,67,319/- is outstanding in the case of the Petitioner for the AY 2013-14 to 2020-21.

3. Learned counsel for the petitioner states that the Petitioner filed appeals against the orders passed under Section 201/201(1A) of the Act and also filed a consolidated application dated 9th September, 2022 for seeking a stay on the demand till the disposal of the appeals for all the AYs stating that the provisions of Section 194H of the Act are not applicable on the free samples given under the sales promotion scheme as the same is a trade incentive and not a commission/brokerage as held by this High Court in the case of *CIT vs. Jai Drinks Pvt. Ltd. in 336 ITR 383 (Del)*. He points out that the additional items allowed with the purchases are not commission/brokerage as contemplated under Section 194H of the Act because the purchaser has not rendered any service to the Petitioner.

4. Learned counsel for the petitioner states that the application for stay was dismissed vide order dated 14th September, 2022 holding that the Petitioner has not paid 20% of the disputed demand and has failed to produce any cogent reasons or financial constraints faced by it in payment of 20% of the outstanding demand. He states that the Petitioner filed another application dated 6th October, 2022 before the Respondent No. 2 seeking stay of the demand till the disposal of the appeal. He however states that the Petitioner's application for stay was dismissed vide the impugned order dated 26th October, 2022 in an arbitrary and non-speaking

manner without dealing with the contentions raised by the Petitioner in its application. He lastly states that the Petitioner's appeals for the financial years 2012-13 and 2013-14 have already been heard and judgment(s) reserved.

5. Issue notice. Mr. Puneet Rai, learned senior counsel accepts notice on behalf of the Respondents-Revenue. He states that the direction to deposit 20% of the demand is in accordance with the Office Memorandums dated 29th February, 2016 and 31st July, 2017.

6. Having heard learned counsel for the parties and having perused the two Office Memorandums, in question, this Court is of the view that the requirement of payment of twenty percent of disputed tax demand is not a pre-requisite for putting in abeyance recovery of demand pending first appeal in all cases. The said pre-condition of deposit of twenty percent of the demand can be relaxed in appropriate cases. Even the Office Memorandum dated 29th February, 2016 gives instances like where addition on the same issue has been deleted by the appellate authorities in earlier years or where the decision of the Supreme Court or jurisdictional High Court is in favour of the assessee.

7. In fact the Supreme Court in the case of ***PCIT vs. M/s LG Electronics India Pvt. Ltd. (2018) 18 SCC 447*** has held that tax authorities are eligible to grant stay on deposit of amounts lesser than twenty percent of the disputed demand in the facts and circumstances of a case. The relevant portion of the said judgment is reproduced hereinbelow:-

'Having heard Shri Vikramjit Banerjee, learned ASG appearing on behalf of the appellant and giving credence to the fact that he has argued before us that the administrative Circular will not operate as a fetter on the Commissioner

since it is a quasi-judicial authority, we only need to clarify that in all cases like the present, it will be open to the authorities, on the facts of individual case, to grant deposit orders of a lesser amount than 20%, pending appeal.'

8. In the present case, the impugned order is non-reasoned. The three basic principles i.e. the prima facie case, balance of convenience and irreparable injury have not been considered while deciding the stay application.

9. Consequently, the impugned order is set aside and the matter is remanded back to the Commissioner of Income Tax for fresh decision on the application for stay. However, before deciding the stay application, the Commissioner of Income Tax shall grant a personal hearing to the authorised representative of the Petitioner. For this purpose, list the matter before the Commissioner of Income Tax on 05th December, 2022.

10. It is clarified that till the stay application filed by the petitioner is not decided, no coercive action shall be taken by the Respondents against the Petitioner in pursuance to the demand arising out of the impugned order. With the aforesaid directions, the present writ petition along with pending applications stand disposed of.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 18, 2022
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