

Sl No. 54
28.02.2023.
SB-II
AGM

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

WPA 378 of 2023

**Manish Lakhotia
-versus
Income Tax Officer & Ors.**

Mr. Dhiraj Lakhotia,
Mr. Abhilash Mittal,
... For the petitioner.

Mr. Ajoy Kumar Singhania,
... For the Income Tax Dept.

The petitioner is aggrieved by the order dated 7th February, 2023 passed by the Assessing Officer directing the petitioner to pay 20% of the tax demand and then file stay petition for granting stay on tax demand.

The petitioner submits that the petitioner filed an application under Section 246 of the Income Tax Act, 1961 annexed all the documents in support of his prayer. The Assessing Officer, without considering the relevant documents passed an absolutely non-speaking mechanical order, giving no reason as to why the prayer of the petitioner cannot be allowed.

Reliance has been placed on the order passed by the Hon'ble Supreme Court in the matter of Principal Commissioner of Income Tax -Vs- M/s. L. G. Electronics India Private Limited reported in (2018) 18 SCC 447.

Learned advocate representing the respondent authorities opposes the submission of the petitioner. It

has been submitted that in view of the amended provision of the Income Tax, it is mandatory to deposit 20% of the tax amount prior to the appeal being heard.

It has further been submitted that there is a provision for preferring review against the order passed. The ratio laid down in the matter of L. G. Electronics (supra) will not be applicable in view of the amended provision of law. Reference has also been made to the latest circular of the CBDT.

I have heard the submissions made on behalf of both the parties.

The Hon'ble Supreme Court while dealing with a similar provision has specifically laid down that the administrative circular will not operate as a fetter on the Commissioner. The Court further clarified that in all cases it will be open to the authorities, on the facts of the individual cases, to grant deposit orders of lesser amount than 20%, pending appeal.

The respondent authority will be bound by the clarification in the said order of the Hon'ble Supreme Court.

The impugned rejection does not reflect that the grounds mentioned in the application under Section 220 (6) of the Income Tax Act, 1961 was at all considered by the Assessing Officer. The order appears to be passed in a mechanical manner upon non application of mind.

In view of the above, the impugned order dated 07.02.2023 is set aside and quashed.

The Assessing Officer is directed to revisit the issue in the light of the order passed by the Hon'ble Supreme Court in the matter of L.G. Electronics (supra) and upon considering the documents submitted by the assessee.

A decision shall be taken at the earliest but positively within a fortnight from the date of communication of this order.

The writ petition stands disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)