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W.P.O. No. 2294 of 2022

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Original Side

DANIELI INDIA LIMITED
Vs.
THE ASST. COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE 2(2), KOLKATA.

BEFORE :
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date : 1st September, 2023.

Mr. J.P. Khaitan, Sr. Adv.
Mr. Pratyush Jhunjhunwala, Adv.
Mr. A.K.Dey, Adv.
Ms. Sritapa Sinha, Adv.
...for the petitioner
Mrs. Smita Das De, Adv.
...for the respondents

The Court : Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned action of the respondent Income Tax Authority concerned in denying the admitted refund to the petitioner in respect of the assessment years 2010-11 and 2017-18 by making adjustment under Section 245 of the Income Tax Act, 1961 for recovery of demand arising out of the assessment order relating to assessment years 2011-12, 2012-13 and 2013-14 without compliance of mandatory formality of making prior intimation to the petitioner before making such adjustment of demands relating to the aforesaid assessment years against which admittedly appeals are pending before the CIT (Appeals) concerned and also on the ground that if at all, the Income Tax Authority even without intimation under Section 245 of the Act, he cannot recover more than 20% of the demand arising out of the aforesaid assessment orders against which appeals are pending before the CIT (Appeals).

Considering the facts and circumstances of the case as appears from record annexed to the writ petition, undisputed and admitted fact which emerge are as follows :

1) That admittedly petitioner is entitled for refund in respect of assessment years 2010-11 and 2017-18;

2) Admittedly statutory appeals before the CIT (Appeals) are pending against the assessment orders relating to assessment years 2011-12, 2012-13 and 2013-14 out of which demand has arisen and for recovery of the same by way of adjustment has been made from the refund relating to assessment years 2010-11 and 2017-18 ;

3) Admittedly the amount recovered by way of adjustment from the admitted refund in respect of assessment year 2010-11 and 2017-18, for the demand relating to assessment years 2011-12, 2012-13 and 2013-14 are in excess of 20% of the demand.

The legal issue which petitioner has raised in this writ petition is that if at all the respondent Income Tax Authority can recover, can he recover more than 20% of the demand arising out of the relevant assessment orders against which appeals are pending, by way of making adjustment from the refund in respect of any other assessment years and petitioner submits that in this case admittedly the assessing officer has recovered more than 20% of the demand relating to assessment orders against which appeals are pending from the admitted refund in respect of other assessment years and such action of the assessing officer is not sustainable in law.

Petitioner in support of its contention has relied on a decision of this Court in the case of Graphite India Ltd. vs. Deputy Commissioner of Income Tax & Ors. reported in (2022) 448 ITR 292 (Cal) and submits that the aforesaid issue is directly covered in favour of the petitioner, by the aforesaid reported decision of this Court.

Considering the facts and circumstances of this case which appears from record and submission of the parties and the decision in the case of Graphite India Ltd. (supra), this writ petition being WPO 2294 of 2022 is disposed of by holding that the action of the assessing officer recovering amount in excess of 20% of the demand arising out of relevant assessment orders against which Appeals are pending before CIT (Appeals) by way of adjustment from the admitted refund relating to other assessment years are arbitrary and not sustainable in law.

Accordingly, the respondent Income Tax Authority concerned is directed to refund the amount in excess of 20% which has been recovered from the refund of assessment years 2010-11 and 2017-18 for recovery of the demand arising out of the assessment orders relating to assessment years 2011-12, 2012-13 and 2013-14 against which appeals are pending before the CIT (Appeals), within a period of four weeks from the date of communication of this order subject to verification of the actual amount recovered and for this purpose respondent Income Tax Authority concerned shall afford an opportunity of hearing to the petitioner if required for clarification in support of such claim.

With these observations and directions, this writ petition stands disposed of.

Affidavit in reply filed in Court be kept with the records.

(Md. Nizamuddin, J.)

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