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

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Decision delivered on: 04.08.2023

+ **W.P.(C) 5176/2022 & CM No.39698/2023**

MAX LIFE INSURANCE COMPANY LIMITED Petitioner

Through: Mr Ajay Vohra, Sr Adv. with Mr Himanshu S. Sinha, Mr Parash Bishwal, Mr Bhuwan Dhoopar and Mr Jainender Singh Kataria, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE - 10

(1), DELHI AND ANR. Respondents

Through: Mr Gaurav Gupta Sr. Standing Counsel with Mr Shivendra Singh and Mr Puneett Singhal, Standing Counsels.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. With the consent of learned counsel for the parties, the above-captioned writ petition and application are taken up for hearing and final disposal.
2. The prayers made in the writ petition, in a sense, broadly, articulate the grievance of the petitioner. For the sake of convenience, the substantive prayers made in the writ petition are extracted hereafter :



- “a) issuance of a writ of mandamus directing the Respondents to refund the amount adjusted against the disputed demand for AY 2017-18 in an illegal and arbitrary manner by adjusting the same against the refund for the preceding years i.e. AY 2013-14 and 2014-15; and*
- b) issuance a writ of mandamus restraining the Respondents from further recovery of outstanding tax demand for AY 2017-18 until the disposal of appeal filed by the Petitioner before the Commissioner (Appeals);*
- c) imposition of exemplary costs on Respondents for carrying out a blatantly illegal recovery of tax against the accepted principles of reasonableness, judicial discipline and law.*
- d) For ad-interim reliefs as the Court may deem fit; and*
- e) For the costs of this Petition.”*

3. The substantive prayers made in the application read as follows :

- “a) direct Respondent No.1 to refund the excess amount of Rs.12,68,20,270 adjusted against the disputed demand for AY 2017-18 in an illegal and arbitrary manner;*
- b) direct the CIT(A)/NFAC to dispose-of the Applicant’s appeal bearing number 10488/2019-20 in a time bound manner.”*

3.1 This prayer made in the application is based on the order dated 27.09.2022 passed by the Commissioner of Income Tax (Appeals) [in short, “CIT(A)”] for Assessment Year (AY) 2017-18. The operative part of this order reads as follows :

“.... 5. However, against the total demand of Rs.221 crores, Rs.86 crores have been recovered by the CPC by adjusting refund arising out of appeal effect for AY’s 2013-14 & 2014-15. As almost 40% of demand has already been recovered by way of adjustment by the CPC and as for the instant year, 1st appeal is pending before the CIT(A), stay of balance demand is recommended.”

7. **Decision :** *In this regard, after careful consideration of the facts and circumstances of the case and recognizing the fact that more than 20% of the outstanding demand has already been adjusted by the department, stay for the balance outstanding demand is hereby granted till disposal of the first appeal. The assessee is advised to file petition through proper channel for early hearing of its appeal.”*



4. In sum, the direction of the CIT(A) is that the respondents/revenue cannot recover anything more than 20% of the demand. This order also reflects the position that the amount recovered, i.e., Rs.86 crores, (as is obvious if simple mathematical calculation is done), is more than 20% of the demand; which is approximately Rs.221 crores.

5. As per Central Board of Direct Taxes (CBDT) OM dated 31.07.2017 in F. No. 404/72/93-ITCC (FTS:284146), the respondents/revenue cannot recover more than 20% of the outstanding demand, which is Rs.221,03,71,862/-, for the AY in issue, i.e., 2017-18.

6. Furthermore, Mr Gaurav Gupta, learned senior standing counsel, who appears on behalf of the respondents/revenue, does not dispute the fact that the petitioner/assessee has preferred an appeal, which is pending adjudication with the CIT(A).

7. In these circumstances, the writ petition is disposed of, with the following directions:

7.1 The respondents/revenue will refund the amount which is in excess of 20% of the outstanding demand, i.e., Rs.221,03,71,862/-, concerning AY 2017-18.

7.2 The said sum will also include Rs.12,68,20,270/-, that was sought to be adjusted against the disputed demand for AY 2017-18 by respondent no.1.

7.3 The CIT(A) will endeavour to dispose of the appeal at the earliest. The amount will be remitted as expeditiously as possible, though, not later than six (6) weeks from the date of receipt of this order, along with applicable interest.



8. The writ petition is disposed of, in the aforesaid terms.
9. Consequently, the pending application shall stand closed.
10. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

AUGUST 4, 2023/aj