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

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Decision delivered on: 25.04.2023

+ **W.P.(C) 5197/2023 & CM Nos.20269-70/2023**

AMTEK TRANSPORTATION SYSTEMS LIMITED.... Petitioner

Through: Mr S. Krishnan, Adv.

versus

ASSISTANT COMMISSIONER OF INCOME TAX,
CIRCLE-1(1), NEW DELHI & ORS. Respondents

Through: Mr Zoheb Hossain, Sr Standing
Counsel with Mr Sanjeev Menon and
with Mr Parth Semwal, Jr Standing
Counsels.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

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

RAJIV SHAKDHER, J. (ORAL):

CM No.20270/2023

1. Allowed, subject to just exceptions.

W.P.(C) 5197/2023 & CM No.20269/2023 [*Application filed on behalf of
the petitioner seeking interim relief*]

2. Issue notice.

2.1 Mr Zoheb Hossain, learned senior standing counsel, accepts notice on
behalf of the respondents/revenue.

3. In view of the directions that we propose to pass, Mr Hossain says
that he does not wish to file a counter-affidavit in the matter.

3.1 Therefore, with the consent of the learned counsel for the parties, the writ petition is taken up for hearing and final disposal, at this stage itself.

4. The principal grievance, which has been articulated before us by Mr S. Krishnan, who appears on behalf of the petitioner, is that the impugned order dated 08.04.2023, whereby the application for stay of the operation of demand notice has been rejected, is bereft of any cogent reasons.

4.1 In this context, our attention has been drawn to the application dated 15.03.2023, wherein the petitioner appears to have made certain averments to set up a *prima facie* case for staying the demand. The aspects concerning balance of convenience and irreparable injury were also, in a sense, adverted to in the application.

5. According to Mr Krishnan, a perusal of the order dated 08.04.2023 would show that the concerned authority has simply taken recourse to the CBDT instructions dated 31.07.2017, and those which preceded while issuing the direction, that the outstanding demand will remain stayed, provided 20% of the outstanding demand is deposited.

6. The record shows, that an *ex parte* assessment order was passed on 27.12.2022 under Section 144 read with Section 144B of the Income Tax Act, 1961 [in short, "Act"]. This was followed by a demand notice of even date i.e., 27.12.2022.

6.1 Thus, a humongous demand of Rs.1,29,70,09,500/- has been raised *qua* the petitioner concerning the Assessment Year (AY) in issue, i.e., AY 2021-22.

7. The record also shows, that the petitioner's bank account was attached by virtue of an order dated 05.03.2023 issued by the concerned authority.

7.1 In sum, the petitioner, in terms of the impugned order dated 08.04.2023 would have to deposit Rs.25,94,01,900/- if it wishes to have the benefit of stay on the demand notice referred to hereinabove.

8. Mr Krishnan has stated, that not only is the petitioner unable to meet the terms of the impugned order, the demand itself is, *prima facie*, substantially unsustainable.

8.1 It is Mr Krishnan's contention, that the value of the total assets available with the petitioner is approximately Rs.21.91 crores, and that it has a turnover of nearly Rs.2.15 crores.

8.2 It is also Mr Krishnan's contention, that the petitioner, presently, has a negative net worth. It is emphasised, that its current liabilities, nearly, amount to Rs.99 crores.

9. We may note, that the petitioner had indicated in its reply, that a substantial part of the addition was unsustainable.

10. A perusal of paragraph 10 of the petitioner's application, which is marked as Annexure-P5 and is appended on page 40 of the case file would show, that qua the difference in turnover which has been added to the petitioner's taxable income, a major part has arisen, according to the petitioner, on account of sale of machinery. The amount attributed to this transaction is Rs.8,01,12,012/-.

10.1 Likewise, the petitioner has also averred in the very same application, that the Assessing Officer (AO) has added the entire amount, which was shown as current liabilities, i.e., Rs.99,86,14,787/- on account of the fact that there was no explanation.

10.2 Furthermore, it is the stand of the petitioner, that expenses amounting to Rs.71,64,71,368/- have also been disallowed by the AO, on the ground that there was no explanation, although, the petitioner claims that these very expenses were added back by the petitioner on its own, and therefore, no explanation was required.

11. These are the aspects, which in our view, are *inter alia* referred to in the application for stay, which the concerned authority should have dealt with, while dealing with the petitioner's application for grant of stay.

11.1 As indicated hereinabove, the AO has merely gone by the aforementioned CBDT instructions and granted stay, on deposit of 20% of the outstanding demand.

12. In our opinion, if the demand is likely to get scaled down for the reasons adverted to in the petitioner's application, these aspects will have to be taken into account by the concerned authority, while dealing with the application for stay.

12.1 Besides this, the concerned authority also needs to bear in mind, the dicta of the Supreme Court in ***PCIT vs. M/s LG Electronics India Pvt. Ltd.*** (2018) 18 SCC 447. The requirement to deposit 20% of the demand is not cast in stone. It can be scaled down in a given set of facts.

13. Thus, for the aforesaid reasons, we are inclined to set aside the order dated 08.04.2023. It is ordered accordingly.

14. The PCIT, as suggested by Mr Hossain, will carry out the *de novo* exercise, and take a decision on the application for stay preferred by the petitioner.

14.1 The PCIT will grant personal hearing to the authorised representative of the petitioner. In this behalf, the PCIT will issue notice to the petitioner, indicating the date and time of the hearing.

14.2 Needless to add, the PCIT will also pass a speaking order and deal with the assertions made by the petitioner in the stay application.

15. At this stage, Mr Krishnan says, that the petitioner would like to make a concession, which is that the amount which is lying to the credit of the petitioner in the subject bank account could be remitted to the concerned authority, subject to the debit-freeze being lifted.

15.1 Mr Krishnan informs us, that at the point in time when the debit freeze was ordered, there was, approximately, Rs.35,48,374/- available in the subject bank account.

15.2 Mr Krishnan says, that more money may have been credited, as the restraint was only against withdrawing money from the subject bank account.

16. Given this position, a direction is issued, to the effect that the entire amount which is available in the subject bank account shall stand remitted to the PCIT.

16.1 In the event the amount presently available is remitted, for the moment, the debit-freeze ordered by the concerned authority shall stand lifted.

17. We make it clear, that notwithstanding the fact, that the application for stay is required to be heard by the PCIT, the same would not come in the way of the NFAC hearing and disposing of the pending appeal preferred by the petitioner qua the assessment order.

18. The writ petition is disposed of in the aforesaid terms.
19. Pending application shall also stand closed.
20. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

APRIL 25, 2023

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[Click here to check corrigendum, if any](#)