OD–1

WPO/346/2024

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

EDUCATION RESEARCH AND DEVELOPMENT FOUNDATION

-VERSUS-

UNION OF INDIA AND ORS.

BEFORE :
THE HON'BLE JUSTICE RAJA BASU CHOWDHURY
Date : 13th JUNE, 2024

Appearance :
Ms. Manasi KUmari, Adv.
Mr. D. N. Chunder, Adv.
Mr. A. Chowdhury, Adv.
Mr. A. Alim, Adv.
….for petitioner.

Mr. Om Narayan Rai, Adv.
…for the respondent.

The Court :-

1. By way of the present writ petition, the petitioner, in effect, is calling upon the respondents not to take further steps on the basis of the demand notice dated 7th April, 2024 appearing at page 34 of the writ petition.

2. The petitioner claims to be an educational research organization engaged in imparting education. It is the petitioner's case that the petitioner was served with a notice issued under Section 143(2) of the Income Tax Act, 1961 (hereinafter referred to as the "said Act") dated 22nd September, 2019 whereby the petitioner was called upon to furnish details as specified in the

said notice justifying its return income. According to the petitioner, sometimes in the month of February, 2020 the Assessing Officer had sent a questionnaire to the petitioner under Section 142(1) of the said Act, seeking the petitioner's reply on or before 26th February, 2020. The petitioner, however, was unable to file such reply within the due date and had sought for extension. Subsequently, the case was transferred to the National e-assessment centre in October, 2020. Though, the Assessing Officer by notice dated 3rd March, 2021 issued under Section 142(1) of the said Act, had called upon the petitioner to provide certain clarification, the petitioner claims that the petitioner could not comply with such direction due to nation-wide lock down and due to unavoidable circumstances arising out of CAA protest in Assam and West Bengal. Subsequently, the order under Section 143(3) read with Section 144B of the said Act, was issued on 7th April, 2021. The same was followed by a demand notice issued under Section 156 of the said Act on 7th April, 2021 itself.

3. Being aggrieved, the petitioner has preferred an appeal from the aforesaid order. The factum of filing of such appeal before the Commissioner of Income Tax would be corroborated from the acknowledgement issued by the respondents on 10th May, 2021. According to the petitioner, although the petitioner, by reason of pendency of the said appeal, had applied before the jurisdictional Assessing Officer on 18th July, 2021 for keeping the demand in abeyance till disposal of the appeal, the same was, however, disposed of by an order dated 21st June, 2023 whereby the petitioner was called upon to make payment of 20% of the outstanding demand in terms of the CBDT

Instruction No.1914 dated 2nd December, 1993. Although, a further application was filed by the petitioner on 23rd June, 2023 to, in effect, treat the petitioner as not being in default in respect of the amount in dispute in the appeal, such application captioned as “petition for stay of demand and taking coercive measure” was rejected on the ground that mere filing of appeal was not sufficient reason for staying the demand. Accordingly, the petitioner was directed to deposit 20% of the outstanding demand as per CBDT Instruction No.1914 dated 2nd December, 1993.

4. Ms. Kumari, learned Advocate representing the petitioner, submits that in the event the petitioner is called upon to deposit 20% of the disputed amount, the same would result in enormous financial burden/stress and would effect day to day functioning of the petitioner. She submits that it is not mandatory in all cases for the assessing officer to direct an assessee to make payment of 20% of the disputed tax. Considering the financial stress that the petitioner would suffer, this Court may be pleased to treat the petitioner as not in default till the disposal of the appeal as the petitioner has good chance of success in the appeal.

5. Mr. Rai, learned Advocate representing the respondents, has placed before this Court the Office Memorandum dated 29th February, 2016 including the Instruction No.1914 issued by the Central Board of Direct Taxes. He submits that the guidelines have been framed in relation to disposal of cases under Section 220(6) of the said Act. According to Mr. Rai, there is no irregularity on the part of the assessing officer in directing the petitioner to deposit 20% of the disputed amount. As such no interference is called for.

6. Heard the learned Advocates appearing for the respective parties and considered the materials on record. In this case it may be noticed that an order under Section 143(3) read with Section 143(3A) and 143(3B) of the said Act has been passed on 7th April, 2021. It is also an admitted position that the petitioner had filed an appeal under Section 246 of the said Act. Admittedly, the said appeal is pending consideration. I have taken note of the guidelines issued by the Central Board of Direct Taxes dated 29th February, 2016 including Instruction No.1914 dated 2nd February, 1993 as well as Office Memorandum dated 31st July, 2017. Although ordinarily where an assessee files an appeal disputing the demand, stay may be granted upon payment of 20% of the disputed demand, however, exceptional circumstances have also been noted in the Memorandum dated 29th February, 2016. In this context, paragraph 4 of the aforesaid Memorandum is extracted hereinbelow :

> *"4. In order to streamline the process of grant of stay and standardize the quantum of lump sum payment required to be made by the assessee as a pre-condition for stay of demand disputed before CIT (A), the following modified guidelines are being issued in partial modification of Instruction No. 1914:*
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> *(A) In a case where the outstanding demand is disputed before CIT (A), the assessing officer shall grant stay of demand till disposal of first appeal on payment of 15% of the disputed demand, unless the case falls in the category discussed in para (B) hereunder.*
>
> *(B) In a situation where,*
>
> *(a) the assessing officer is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount higher than 15% is warranted (e.g. in a case where addition on the same issue has been confirmed by appellate authorities in earlier years or the decision of the Supreme Court or jurisdictional High Court is*

in favour of Revenue or addition is based on credible evidence collected in a search or survey operation. etc.) or,

(b) the assessing officer is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount lower than 15% is warranted (e.g. in a case where addition on the same issue has been deleted by appellate authorities in earlier years or the decision of the Supreme Court or jurisdictional High Court is in favour of the assessee, etc.), the assessing officer shall refer the matter to the administrative Pr. CIT/CIT, who after considering all relevant facts shall decide the quantum/proportion of demand to be paid by the assessee as lump sum payment for granting a stay of the balance demand.

(C) In a case where stay of demand is granted by the assessing officer on payment of 15% of the disputed demand and the assessee is still aggrieved, he may approach the jurisdictional administrative Pr. CIT/CIT for a review of the decision of the assessing officer.

(D) The assessing officer shall dispose of a stay petition within 2 weeks of filing of the petition. If a reference has been made to Pr. CIT/CIT under para 4 (B) above or a review petition has been filed by the assessee under para 4 (C) above, the same shall also be disposed of by the Pr. CIT/ CIT within 2 weeks of the assessing officer making such reference or the assessee filing such review, as the case may be.

(E) In granting stay, the Assessing Officer may impose such conditions as he may think fit. He may, inter alia,-

(i) require an undertaking from the assessee that he will cooperate in the early disposal of appeal failing which the stay order will be cancelled;

(ii) reserve the right to review the order passed after expiry of reasonable period (say 6 months) or if the assessee has not co-operated in the early disposal of appeal, or where a subsequent pronouncement by a higher appellate authority or court alters the above situations;

(iii) reserve the right to adjust refunds arising, if any, against the demand, to the extent of the amount required for granting stay and subject to the provisions of section 245."

7. Having regard to the aforesaid and taking note of the case made out by the petitioner, the petitioner is directed to make payment of a sum of Rs.40

lakhs with the assessing officer. If such payment is made within a period of eight weeks from date, the demand dated 7th April, 2021 issued under Section 156 of the said Act shall remain stayed till the disposal of the appeal, to the extent challenged in the appeal by treating the petitioner as not being in default in respect of the amount in dispute in the appeal. The payment made by the petitioner with the authorities shall abide by the result of the appeal.

8. With the above observations and directions, the writ petition stands disposed of.

9. There shall be no order as to costs.

10. Urgent Photostat certified copy of this order, if applied for, be made available to the parties on priority basis upon compliance of all formalities.

(RAJA BASU CHOWDHURY, J.)

As./akg/S.Das