$~75

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

\+ W.P.(C) 535/2024, CM APPL. 2362/2024

BUNCH MICROTECHNOLOGIES PRIVATE LIMITED

..... Petitioner

Through: Mr. Deepak Chopra, Mr. Ankul Goyal, Advs.

versus

INCOME TAX OFFICER WARD 5 (1) DELHI AND ANR.

..... Respondent

Through: Mr. Kunal Sharma, Sr. SC with Ms. Zehra Khan, Jr. Standing Counsel, Mr. Shubendru Bhattacharya, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **15.01.2024**

1. This writ petition is directed against the order dated 13 December 2023 in terms of which the application under Section 220(6) of the Income Tax Act, 1961 ["**Act**"] has come to be rejected with the first respondent taking the view that since the writ petitioner had failed to make a pre-deposit of 20% of the outstanding demand, a stay of the demand would not be warranted. The petitioner has also challenged the order dated 8 January 2024 wherein the application filed for review of the order dated 13 December 2023 was rejected by the second respondent.

2. The aforesaid view is premised on a reading of OM No. 404/72/93-ITCC dated 31 July 2017 issued by the Central Board of

Direct Taxes ["**CBDT**"] with respect to Instruction No. 1914 dated 21 March 1996 and which the respondents appear to read as mandating a pre deposit of 20% of the outstanding demand before the powers conferred by Section 220(6) of the Act could be exercised.

3. The aforesaid view would clearly not sustain bearing in mind the following position in law which was enunciated by the Division Bench of the Court in **LG Electronics India Pvt. Ltd vs. Pr. Commissioner of Income Tax & Ors.** [2017 SCC OnLine Del 12760**]**

> "7. The impugned order clearly makes no reference to the central issue in the pending appeal or the grievance of the Petitioner regarding the order passed by the AO. The impugned order in short is without reasons and is therefore unsustainable in law.
>
> 8. For the above reasons, the impugned order is set aside and a direction is issued that the Petitioner's application will once again be heard by the PCIT on merits and without reference to the OM dated 31st July, 2017, which, on the face of it, appears to curtail his discretion. The PCIT will dispose of the application with a reasoned order not later than two weeks from the date of receipt of this order."

We note that the said decision has since then been affirmed by the Supreme Court in **Principal Commissioner of Income Tax and Ors. vs. LG Electronics India Pvt. Ltd.** [(2018) 18 SCC 447] wherein it was held:

> "**2.** Having heard Shri Vikramjit Banerjee, learned ASG appearing on behalf of the appellant, and giving credence to the fact that he has argued before us that the administrative circular will not operate as a fetter on the Commissioner since it is a quasi-judicial authority, we only need to clarify that in all cases like the present, it will be open to the authorities, on the facts of individual cases, to grant deposit orders of a lesser amount than 20%, pending appeal."

4. In view of the aforesaid, we find ourselves unable to sustain the impugned orders.

5. The writ petition is accordingly allowed. The impugned orders dated 13 December 2023 and 8 January 2024 are hereby set aside. The matter shall stand remitted to the first respondent who shall pass fresh orders bearing in mind the observations appearing hereinabove as well as the judgments rendered on the subject.

6. Pending application also stands disposed of.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

JANUARY 15, 2024

neha