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

\+ W.P.(C) 2396/2023

EBONY RETAIL HOLDINGS LIMITED ..... Petitioner

Through: Mr. Saurabh Chaturvedi and Mr. Jatin Aditya K., Advs.

versus

COMMISSIONER OF INCOME TAX, DELHI-III & ORS. ..... Respondents

Through: Mr. Kunal Sharma, Sr. Standing Counsel along with Ms. Zehra Khan, Jr. Standing Counsel and Mr. Shubhendu Bhattacharyya, Adv.

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

<u>O R D E R</u>

% **19.02.2024**

1. This writ petition has been preferred seeking the following reliefs:-

> "A. Issue a writ of Certiorari or Writ, order or direction in the nature of Certiorari, or any other appropriate writ, order or direction under Article 226 of the Constitution of India, thereby quashing adjustment of Rs.24,84,256/- from the refunds of Assessment Year 2021-22, against penalty demand of assessment year 2016-17 and directing the Respondents to grant the said refund to the Petitioner; and or
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> B. Pass such other order(s) this Hon'ble Court may deem fit and appropriate in the facts and circumstances of the present case."

2. The dispute itself pertains to refunds which are claimed by the petitioner pertaining to Assessment Year ["**AY**"] 2021-22. The writ

petitioner is principally aggrieved by the aforesaid refunds having been adjusted against an amount of Rs. 24,84,256/- which represents the penalty imposed for AY 2016-17. The record would reflect that the penalty order is dated 14 March 2022. The petitioner is stated to have filed a statutory appeal in respect thereof on 04 April 2022.

3. However, and admittedly no interim order operated on that appeal. The petitioner also does not appear to have applied for any injunctive protection in terms of Section 220(6) of the Income Tax Act, 1961 ["**Act**"]. The assessment for 2021-22 ultimately came to be completed in terms of the intimation which came to be issued to the petitioner and has been placed on the record as Annexure P-8.

4. As is evident from the aforesaid order framed under Section 143(1) of the Act, the amount of refund which was claimed by the petitioners came to be reduced to Rs. 24,84,256/- and an adjustment proposed. It was pursuant to the aforesaid that an intimation email under Section 245 of the Act also came to be addressed to the petitioner and required it to take appropriate steps, failing which the outstanding amount would be considered for adjustment against the refund as computed. The aforesaid email accorded 30 days' time to the petitioner to proceed in that regard.

5. It is however asserted before us that even before the 30 day period could expire, the respondents proceeded to adjust the refund as would be evident from the assessment order under Section 143(1) of the Act.

6. However, the respondents have taken the categorical stand in the counter affidavit that the adjustment was effected only on 09 November 2022 and the net amount refunded thereafter on 11 November 2022. The writ petitioner has failed to traverse or dislodge

this categorical assertion and stand as taken. We note that in any case, now that the adjustment has been effected, the validity thereof would in any case have to abide by the decision which may be rendered on the appeal which has been preferred by the writ petitioner.

7. We, consequently, find no justification to issue the writs as prayed for. The writ petition shall stand disposed of on the above terms.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

FEBRUARY 19, 2024/ RW