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

\+ W.P.(C) 3561/2024, CM APPL. 14507/2024 (Stay), CM APPL. 14509/2024 (Permission to file a lengthy synopsis and list of dates and events), CM APPL. 16039/2024 (for modification) & CM APPL. 16148/2024 (amendment)

M/S JBN APPARELS PVT LTD ..... Petitioner

Through: Mr. Satvik Varma, Sr. Adv. with Mr. Gautam Jain, Mr. Shadman Ahmed Siddiqui, Ms. Ghazal and Ms. Nikita Jain, Advs.

versus

OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX CENTRAL CIRCLE 25 DELHI ..... Respondent

Through: Mr. Shlok Chandra, Sr.SC with Ms. Madhavi Shukla, Jr.SC along with Mr. Ujjawal Jain, Adv.

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\+ W.P.(C) 3565/2024, CM APPL. 14520/2024 (Stay) & CM APPL. 14522/2024 (Permission to file a lengthy synopsis and list of dates and events), CM APPL. 16160/2024 (for modification) & CM APPL. 16030/2024 (amendment)

M/S AASTHA APPARELS PVT. LTD ..... Petitioner

Through: Mr. Satvik Varma, Sr. Adv. with Mr. Gautam Jain, Mr. Shadman Ahmed Siddiqui, Ms. Ghazal and Ms. Nikita Jain, Advs.

versus

OFFICE OF THE ASSISTANT COMMISSIONER OF

INCOME TAX CENTRAL CIRCLE 25 DELHI

..... Respondent

Through: Mr. Shlok Chandra, Sr.SC with Ms. Madhavi Shukla, Jr.SC along with Mr. Ujjawal Jain, Adv.

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\+ W.P.(C) 3566/2024, CM APPL. 14525/2024 (Stay) & CM APPL. 14527/2024 (Permission to file a lengthy synopsis and list of dates and events) & CM APPL. 16035/2024 (for modification)

VIKAS CHAUDHARY ..... Petitioner

Through: Mr. Satvik Varma, Sr. Adv. with Mr. Gautam Jain, Mr. Shadman Ahmed Siddiqui, Ms. Ghazal and Ms. Nikita Jain, Advs.

versus

OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX CENTRAL CIRCLE 25,DELHI

..... Respondent

Through: Mr. Shlok Chandra, Sr.SC with Ms. Madhavi Shukla, Jr.SC along with Mr. Ujjawal Jain, Adv.

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\+ W.P.(C) 3567/2024, CM APPL. 14530/2024 (Stay) & CM APPL. 14532/2024 (Permission to file a lengthy synopsis and list of dates and events), CM APPL. 16021/2024 (for modification) & CM APPL. 16146/2024 (amendment)

M/S JBB APPARELS PVT. LTD ..... Petitioner

Through: Mr. Satvik Varma, Sr. Adv. with Mr. Gautam Jain, Mr. Shadman Ahmed Siddiqui, Ms. Ghazal and Ms. Nikita Jain, Advs.

versus

OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX CENTRAL CIRCLE 25 DELHI

..... Respondent

Through: Mr. Shlok Chandra, Sr.SC with Ms. Madhavi Shukla, Jr.SC along with Mr. Ujjawal Jain, Adv.

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

O R D E R

% 15.03.2024

CM APPLs. 16040/2024 & 16149/2024 (Ex.) in W.P.(C) 3561/2024
CM APPLs. 16031/2024 & 16161/2024 (Ex.) in W.P.(C) 3565/2024
CM APPL. 16036/2024 (Ex.) in W.P.(C) 3566/2024
CM APPL. 16022/2024 (Ex.) in W.P.(C) 3567/2024

1. Allowed, subject to all just exceptions.

2. Applications are disposed of.

W.P.(C) 3561/2024, CM APPL. 14507/2024 (Stay), CM APPL. 14509/2024 (Permission to file a lengthy synopsis and list of dates and events), CM APPL. 16039/2024 (for modification) & CM APPL. 16148/2024 (amendment)
W.P.(C) 3565/2024, CM APPL. 14520/2024 (Stay) & CM APPL. 14522/2024 (Permission to file a lengthy synopsis and list of dates and events), CM APPL. 16160/2024 (for modification) & CM APPL. 16030/2024 (amendment)
W.P.(C) 3566/2024, CM APPL. 14525/2024 (Stay) & CM APPL. 14527/2024 (Permission to file a lengthy synopsis and list of dates and events) & CM APPL. 16035/2024 (for modification)
W.P.(C) 3567/2024, CM APPL. 14530/2024 (Stay) & CM APPL. 14532/2024 (Permission to file a lengthy synopsis and list of dates and events), CM APPL. 16021/2024 (for modification) & CM APPL. 16146/2024 (amendment)

3. This batch of writ petitions impugns orders passed under Section 220(6) of the Income Tax Act, 1961 ["**Act**"]. For the purpose of brevity, we propose to take note of the facts as they obtain in W.P.(C) 3561/2024.

4. As would be manifest from a perusal of the record, the petitioner there appears to have approached the Assessing Officer ["**AO**"] for considering an application for stay on recovery of demand in respect of a demand which existed for Assessment Year ["**AY**"] 2018-2019 and AY 2019-2020. The total demand was in the range of INR 185,34,19,731/-. Upon consideration of the contentions which were addressed, the AO proceeded to dispose of the said application in the following terms:

> "6. In view of the above stated facts, the claim for grant of absolute stay of demand is not eligible. The stay petition filed by you vide letters dated 17.05.2022 for the Income Tax demands as mentioned in para 1, above is hereby rejected and you are requested to kindly deposit 20% of the outstanding demands within 7 days form the receipt of this reply failing which appropriate action for recovery of demand will follow as per law."

5. The petitioner does not appear to have taken any steps thereafter till the AO was approached yet again by way of a subsequent application again seeking stay of the outstanding demands. This application came to be rejected by way of an order dated 09 February 2024. The AO while passing the aforesaid order had taken the position that since the earlier application of stay had been disposed of in terms of the order dated 20 July 2022 and the petitioner had failed to abide by the same, there existed no justification to consider the subsequent application for stay.

6. We note that although while passing the order dated 20 July

2022, the AO had deemed it fit to use the word "*rejected*", it had proceeded to place the petitioner-assessee on the condition of effecting a deposit of 20% of the outstanding demands, failing which appropriate action for recovery would be taken. In that sense, the case would clearly fall within the ambit of paragraph 4(C) of the Office Memorandum dated 29 February 2016 which reads thus:

> "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:
>
> xxxxx xxxxx xxxxx
>
> (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."

7. We are therefore of the considered opinion that if the petitioner be aggrieved by the condition imposed, it would be open to it to approach the Principal Commissioner of Income Tax [**"PCIT"**]. This course would also be appropriate bearing in mind the admitted position disclosed before us today that although the original order of 20 July 2022 by the AO was served on the petitioners, however and according to them the same came to be placed in the spam folder. This was therefore not a case where the petitioner was not served with the original order.

8. We accordingly dispose of these writ petitions along with all the pending applications leaving it open to the writ petitioners to approach the concerned PCIT for considering their prayer for grant of stay on recovery of demand without the conditions which were imposed by the AO. Any such application that may be made shall be duly considered and disposed of in accordance with law and with due

expedition. The PCIT shall afford an opportunity of hearing to the writ petitioners before disposing of the application.

9. All contentions of respective parties on merits are kept open.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 15, 2024/p