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

\+ **W.P.(C) 3757/2024 & CM APPL 15447/2024**

BEST LABORATORIES PVT. LTD. ..... Petitioner

Through: Mr. V.P. Gupta and Mr.Anunav Kumar, Advocates

Versus

PR. COMMISSIONER OF INCOME TAX- 1 & ORS. ..... Respondents

Through: Mr. Sanjay Kumar, Ms. Easha and Ms. Hemlata Rawat, Advocates

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\+ **W.P.(C) 3758/2024 & CM APPL 15451/2024**

BEST LABORATORIES PVT. LTD. ..... Petitioner

Through: Mr. V.P. Gupta and Mr.Anunav Kumar, Advocates

Versus

PR. COMMISSIONER OF INCOME TAX- 1 & ORS. ..... Respondents

Through: Mr. Sanjay Kumar, Ms. Easha and Ms. Hemlata Rawat, Advocates

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

O R D E R

% **13.03.2024**

1. These writ petitions have been preferred seeking the following reliefs:-

> "a) direct the respondents to stay the complete demand of Rs.7,47,30,070/- wrongly raised in the case of the Petitioner Company and also to rectify the mistakes in the intimation dated 13.11.2022 and / or to decide the appeal pending before Respondent No.3
>
> b) issue Writ of prohibition or any other order or direction restraining Respondent No.2 to proceed further to recover / demand any amount from the Petitioner Company pursuant to order of

Respondent No.1 Dated 15.01.2024 during pendency of this Writ Petition before this Hon'ble Court;

c) direct the Respondent No.2 to refund the amount of Rs.21,57,000/- unreasonably withdrawn from the bank account of Petitioner Company by way of bank attachment;

d) issue ex-parte ad-interim directions in terms of prayers (a) to (d) hereinabove; and

e) issue such further order or direction as may be deemed fit so as to afford complete relief to the Petitioner."

2. The petitioner is principally aggrieved by the disposal of its applications purporting to be under Section 220(6) of the Income Tax Act, 1961["**Act**"].

3. The record would reflect that by an order of 2 January 2024, the Assessing Officer ["**AO**"] had rejected the application for stay on recovery of demand and required the petitioner to deposit 20% of the outstanding demand in the following terms: -

> "Please refer to your petition for stay of demand dated 29.12.2023 on the above mentioned subject. Please refer to CBDT instruction through its office Memorandum F. No. 404/72/93-ITCC dated 29.02.2016 & 31.07.2017 also.
>
> In this regard, it is informed that your petition of stay of demand is rejected due to non-fulfillment of conditions as mandated by above referred instructions issued by CBDT. Further, you are directed to immediately deposit 20% of the total demand. The evidence of payment may be furnished to the office of the undersigned within 10 days of issuance of this letter. The balance demand shall be stayed on production of challan payment of the 20% demand, failing which coercive action shall be taken for recovery of whole demand."

4. Dissatisfied by the order so made, the petitioner approached the Principal Commissioner of Income Tax ["**PCIT**"] who has proceeded to dispose of its prayer of the disputed demand being placed in abeyance in the following terms:-

> "2. The assessee filed an application dated 03.01.2024 for stay of demand before this office. In this regard, an opportunity of being

heard was allowed to the assessee vide this office notice dated 08.01.2024 issued vide DIN & Letter No. ITBA/COM/F/17/2023-24/1059488130(1). The case was fixed for 10.01.2024. In response thereto, Sh. Anunav Kumar, CA along with Sh. S.P. Singh, Director attended on 10.01.2024. A demand of Rs. 21,57,000/- is already collected through bank attachment. In this context, the assessee was directed to deposit 10 lacs in each quarter, beginning 1st April 2024 till disposal of first appeal or 30.09.2024 whichever is earlier.

> 3. Accordingly, the assessee's petition is disposed off, once the assessee makes the payment of the above installments the demand will be stayed till disposal of the first appeal or 30.09.2024, whichever is earlier.
>
> 4. However, if the above mentioned sum is not paid as per the schedule given above, the assessee company would be treated as an assessee deemed to be in default u/s 220(4) of the IT Act, 1961 and suitable action will be taken as per the provision of the IT Act and Rules in this regard. For removal of doubts, it is clarified that this order will not affect chargeability of interest u/s 220(2) of the Act."

5. As is ex facie evident, the PCIT as well as the AO have failed to record any cogent reasons while disposing of the application for stay of demand.

6. The aforesaid view will also not sustain in light of the judgment rendered by the Supreme Court in **Commissioner of Income Tax vs. LG Electronics India (P) Ltd.** [(2018) 18 SCC 447]. While dealing with the aforesaid issue the Supreme Court has held as under:-

> "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."

Bearing in mind the aforesaid, we find ourselves unable to sustain the order impugned.

7. The writ petitions are accordingly allowed. The impugned order dated 15 January 2024 are hereby quashed. The matters shall stand

remitted to the PCIT who shall consider the applications for stay afresh and in accordance with law.

8. Insofar as the pending applications under Section 154 of the Act are concerned, we render no observation and leave it open to the writ petitioner to pursue the same independently.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 13, 2024
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