$~57, 59 to 65

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

\+ W.P.(C) 9996/2019 & CM APPL. 43976/2019

M/S. LG ELECTRONICS INDIA PVT. LTD...... Petitioner

Through: Mr. Ankul Goyal, Advocate.

versus

INCOME TAX OFFICER, & ANR. ..... Respondents

Through: Mr. Sanjay Kumar, Sr. Standing Counsel.

59

\+ W.P.(C) 10039/2019 & CM APPL. 43974/2019

M/S. LG ELECTRONICS INDIA PVT. LTD. ..... Petitioner

Through: Mr. Ankul Goyal, Advocate.

versus

INCOME TAX OFFICER, & ANR. ..... Respondents

Through: Mr. Sanjay Kumar, Sr. Standing Counsel.

60

\+ W.P.(C) 9997/2019 & CM APPL. 43977/2019

M/S. LG ELECTRONICS INDIA PVT. LTD...... Petitioner

Through: Mr. Ankul Goyal, Advocate.

versus

INCOME TAX OFFICER & ANR. ..... Respondents

Through: Mr. Sanjay Kumar, Sr. Standing Counsel.

61

\+ W.P.(C) 5031/2022

LG ELECTRONICS INDIA PVT LTD ..... Petitioner

Through: Mr. Ankul Goyal, Advocate.

versus

COMMISSIONER OF INCOME TAX-2 & ANR.

..... Respondents

Through: Mr. Zoheb Hossain, Sr. Standing Counsel.

62

+ W.P.(C) 5640/2022

LG ELECTRONICS INDIA PVT LTD ..... Petitioner

Through: Mr. Ankul Goyal, Advocate.

versus

COMMISSIONER OF INCOME TAX INTERNATIONA TAXATION -2 AND ANR ..... Respondents

Through: Mr. Zoheb Hossain, Sr. Standing Counsel.

63

+ W.P.(C) 5033/2022

LG ELECTRONICS INDIA PVT LTD ..... Petitioner

Through: Mr. Ankul Goyal, Advocate.

versus

COMMISSIONER OF INCOME TAX & ANR.

..... Respondents

Through: Mr. Zoheb Hossain, Sr. Standing Counsel.

64

+ W.P.(C) 5058/2022

M/S LG ELECTRONICS INDIA PVT LTD ..... Petitioner

Through: Mr. Ankul Goyal, Advocate.

versus

COMMISSIONER OF INCOME TAX, INTERNATIONAL TAXATION - 2 AND ANR. ..... Respondents

Through: Mr. Zoheb Hossain, Sr. Standing Counsel.

65

\+ W.P.(C) 5107/2022

LG ELECTRONICS INDIA PVT LTD ..... Petitioner

Through: Mr. Ankul Goyal, Advocate.

versus

COMMISSIONER OF INCOME TAX-2 & ANR.
..... Respondents

Through: Mr. Zoheb Hossain, Sr. Standing Counsel.

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

O R D E R

% **01.05.2024**

1. This batch of writ petitions assail orders passed by the respondents disposing of applications for stay of demand. For the sake of clarity, we produce hereinbelow a table which would indicate the **Assessment Years**[1] to which each writ petition pertains as well as the orders which are impugned therein:-

	W.P. (C) No.	A.Y.	Impugned Order
	9996/2019	2013-14	i. Order dated 04.06.2019 for revocation of stay of demand.
	10039/2019	2012-13	
BATCH A	9997/2019	2014-15	ii. Order dated 10.07.2019

1 AYs

				rejecting the request for stay of demand.
BATCH B	5031/2022	2019-20	i.	Order dated 15.03.2022 directing the Petitioner to deposit the balance demands
	5640/2022	2017-18		
	5033/2022	2018-19		
	5058/2022	2016-17	ii.	Order dated 16.02.2022 directing the Petitioner to pay the entire demand
	5107/2022	2015-16		

2. For the sake of brevity, we firstly take note of the facts as they obtain in W.P.(C) 9996/2019. The assessee is stated to be a company duly incorporated under the Companies Act, 1956 and a wholly owned subsidiary of LG Electronics Inc., Korea. It appears from the record that a survey operation under Section 133A was carried out on 24 June 2010 on the premises of the petitioner to verify the nature of foreign remittances which were being made. Based on the aforesaid operations, notices for reassessment were issued and the petitioner was also held to be an assessee in default in deducting tax under the provisions of Section 201 of the **Income Tax Act, 1961**[2].

3. Pursuant to the above, proceedings came to be initiated under Section 201 of the Act for AYs 2005-06 to 2011-12. The aforesaid proceedings culminated in two final orders being framed by the respondents under Section 201(1) as well as Section 201(1A) of the Act. The aforesaid orders were firstly assailed before the Allahabad High Court which framed directions for the **Assessing Officer**[3] to pass orders afresh. The AO, pursuant to the directions issued by the Allahabad High Court, proceeded to pass orders under Section 201 of the Act holding the petitioner to be an assessee in default for non-deduction of tax on payments made to foreign AEs' and a cumulative

2 Act
3 AO

demand of INR 115,36,25,917/- came to be raised against the petitioner covering AYs 2005-06 to 2011-12.

4. The aforesaid determination was subjected to challenge before the **Commissioner of Income Tax (Appeals)**[4], which in terms of its order of 04 September 2018 accorded partial relief to the petitioner. Although an appeal effect order was thereafter passed on 25 October 2018, the claim of the petitioner for release of refunds was not attended to.

5. Following the earlier orders passed, proceedings for AY 2013-14 also culminated in an order being framed under Section 201 of the Act on 28 March 2019. This time around, the respondents held that LG Electronics Inc., Korea and its **Associated Enterprises**[5] had a **Permanent Establishment**[6] in India and thus an attribution of income exercise was liable to be undertaken.

6. It appears that seeking stay of the consequential demands which had come to be raised, the petitioner moved an application for stay on 15 April 2019. Stay was sought in respect of demands which stood created for similar orders passed for AYs 2012-13, 2013-14 and 2014-15. The said application came to be disposed of vide order dated 18 April 2019 and the existing demands being placed in abeyance subject to the payment of 20%.

7. On 04 June 2019, however, the aforesaid stay was revoked with the AO taking the position that since additions on identical grounds had been confirmed by the appellate authorities for earlier years, the entire demand was liable to be enforced. Aggrieved by the aforesaid view taken by the Income Tax Officer, the petitioner approached the

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4 CIT(A)
[5] AE
[6] PE

Commissioner of Income Tax[7] seeking stay of demands. That application came to be dismissed on 10 July 2019, with the CIT holding that stay would not be merited since the demands had been confirmed by the CIT(A).

8. Insofar as W.P.(C) 5031/2022 is concerned, the said writ petition pertains to AY 2019-20 and owes its genesis to proceedings under Section 201 of the Act, which were initiated on 04 November 2019 in terms of which the respondents sought to treat the petitioners as assesses' in default on account of a failure to deduct tax. The aforesaid proceedings ultimately culminated in an adverse order coming to be framed on 12 January 2022. The respondents firstly held that LG Electronics Inc., Korea had a PE in India and consequently were liable to deduct tax on expatriate salaries to the extent of 20%. The said orders were challenged before the CIT(A) and it was during the pendency thereof that applications for stay of demand came to be made under Section 220(6) of the Act. The applications for stay were initially rejected by the second respondent on 16 February 2022. Aggrieved by the aforesaid action, the petitioner approached the CIT by way of a further application for the demands being placed in abeyance. That application came to be disposed of on 15 March 2022 with the CIT directing the petitioner to clear all outstanding demands in full. The CIT rested its decision on the basis of the additions having been upheld by the CIT(A).

9. When the writ petitions were taken up for consideration today, our attention was drawn to the order dated 21 November 2023 passed by the **Income Tax Appellate Tribunal**[8] in **M/s LG Electronics**

7 CIT
8 ITAT

India Ltd. v. ITO (TDS), International Taxation (ITA No. 7926/Del/2018), which had overturned the view taken by the CIT(A). Admittedly, therefore, the very basis and foundation for the passing of the orders impugned before us ceases to exist.

10. We also take note of the submission addressed on behalf of the petitioner who had submitted that the respondents have clearly erred in basing their decision on the view taken by the CIT(A) and ignoring binding decisions rendered by the jurisdictional High Court. Reliance in this respect was placed on the decision of this Court rendered in **Samsung India Electronics Pvt. Ltd. v. Deputy Director of Income Tax (International Taxation) & Anr.** (2014 SCC OnLine Del 2734) as also of the Supreme Court in **Honda Motor Company Limited, Japan v. Assistant Director of Income Tax, Noida & Ors.** (2018 SCC OnLine SC 409).

11. According to the petitioners, the respondents had committed a gross illegality in revoking the stay which was operating and also in rejecting the applications for stay based solely on the view taken by the CIT(A) as opposed to the view taken and embodied in the decisions rendered by this High Court as well as the Supreme Court.

12. As we view the orders dated 04 June 2019 and 10 July 2019, which forms subject matter of challenge of the first batch of writ petitions as also the orders dated 16 February 2022 and 15 March 2022, it becomes apparent that the respondents while examining the application for stay, had failed to examine and accord due consideration to the contentions which are addressed. Once the assessee had sought to rest their case on the decisions handed down by the jurisdictional High Court, the view as taken in the impugned orders would not sustain bearing in mind paragraph 4(B)(b) of the

Office Memorandum[9] dated 29 February 2016. In any case, the aforesaid orders would have to necessarily be reviewed and the prayer for stay of demand examined afresh, bearing in mind the subsequent judgment rendered by the ITAT on 21 November 2023.

13. In our considered opinion, therefore, the writ petitions would merit being allowed and the AO being required to examine the issue afresh and in light of the observations made hereinabove.

14. We, accordingly, allow the two batches of writ petitions and quash the orders dated 04 June 2019, 10 July 2019, 16 February 2022 and 15 March 2022. The jurisdictional AO shall in consequence take up for examination the applications for stay afresh and decide the issue of stay of demand bearing in mind the observations made hereinabove.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 01, 2024/RW

9 OM