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

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Date of Decision : 04.12.2024+ **W.P.(C) 11115/2019****NOKIA SOLUTIONS AND NETWORKS INDIA PVT. LTD.**

.....Petitioner

Through: Mr. Ankul Goyal & Mr. Ashish
Sarda, Advocates.

versus

JOINT COMMISSIONER OF INCOME TAX, & ORS.

.....Respondents

Through: Mr. Ruchir Bhatia, SSC with Mr.
Anant Mann, JSC & Mr. Abhishek
Anand, Advocate.**CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****VIBHU BAKHRU, J. (ORAL)**

1. The petitioner has filed the present petition, impugning an order dated 07.08.2019, whereby the outstanding demand in respect of the assessment year (AY) 2015-16, had been recovered by adjusting the refund payable to the petitioner for the AY 2008-09.

2. It is contended on behalf of the petitioner that the petitioner was granted stay of recovery of the demand for the AY 2015-16, subject to the



payment of 20% of the outstanding tax demand. The petitioner has, in fact, paid more than that and yet, further amounts which are refundable to the petitioner for earlier years, have been adjusted. According to the petitioner, the same is contrary to the Office Memorandum dated 29.02.2016, issued by the Central Board of Direct Taxes (hereafter *the CBDT*), as well as by the earlier decisions of this court.

THE CONTEXT

3. The aforesaid controversy arises in the following context. The petitioner is a company incorporated in India and is engaged in the business of manufacturing and trading of telecommunication network equipment, network design, installation and commissioning.

4. The petitioner had filed its return of income for the AY 2015-16, declaring an income of ₹994,63,70,810/-. The said return was subsequently modified on 24.06.2016, based on the terms of the Advance Pricing Agreement, and the total income was enhanced to ₹10,81,39,73,740/-. Thereafter, on 31.03.2017, the petitioner filed a revised return disclosing an income of ₹10,76,12,12,220/-.

5. The petitioner's return was picked up for scrutiny. The assessment proceedings culminated in an assessment order dated 29.12.2018, whereby the petitioner's total income was assessed at ₹11,66,69,04,758/- and a demand of ₹43,38,30,384/- was raised.

6. The petitioner appealed the assessment order dated 29.12.2018 by filing an appeal before the Commissioner of Income Tax (Appeals)



[hereafter *CIT (A)*], which is pending. In the meanwhile, the petitioner filed an application under Section 220(6) of the Income Tax Act, 1961 (hereafter *the Act*) praying that the recovery of the outstanding demand be kept in abeyance.

7. On 05.02.2019, respondent no. 1 passed an order directing the petitioner to deposit 20% of the outstanding tax demand as a condition for granting stay of recovery of the balance amount.

8. The petitioner also filed an application for review of the order of conditional stay and by an order dated 21.02.2019, the petitioner was directed to deposit an amount of ₹7,00,00,000/- by 28.02.2019 for grant of stay. The petitioner states that it had already deposited an amount of ₹7,50,00,000/-.

9. It is also material to note that the petitioner had also filed an application under Section 154 of the Act for rectification of certain errors in the assessment order, which were apparent from the record. Pursuant to the rectification carried out, the outstanding demand was reduced to ₹38,70,73,134/-.

10. Admittedly, the condition to deposit part of the demand for securing the stay of balance demand is in conformity with the instructions dated 21.03.1996 as modified by the Office Memorandum dated 29.02.2016, issued by the CBDT. Thereafter, certain refunds were granted to the petitioner in respect of the AY 2008-09 as well as the AY 2017-18. The petitioner is, essentially, aggrieved by the said refunds being adjusted



against the balance outstanding demand in respect of the AY 2015-16, which was stayed in terms of the order dated 05.02.2019 and 21.02.2019.

11. In the aforesaid context, the question that falls for our consideration is whether the Revenue is entitled to adjust the refunds granted to the petitioner against the demand of tax that was stayed, pursuant to the order dated 21.02.2019.

12. Mr. Bhatia, the learned counsel appearing for the Revenue has contended that the grant of stay was not unconditional. The order dated 05.02.2019 expressly provided that the stay granted was, *inter alia*, subject to certain conditions and the same also included a specific condition, whereby the Department reserved the right to adjust the refunds, arising if any, against the demand.

13. The learned counsel appearing for the petitioner submits that the adjustments against the demand necessarily had to be confined to the amount that the petitioner was required to pay for securing the stay of the balance demand – that is the sum of ₹7,00,00,000/-. The learned counsel for the petitioner referred to the Office Memorandum dated 29.02.2016, and drew the attention of this court to Clause (iii) of sub-paragraph (E) of paragraph 4 of the said Memorandum. The same is set out below:

“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:



(E) In granting stay, the Assessing Officer may impose such conditions as he may think fit. He may, inter alia-

(iii) reserve the right to adjust refunds arising, if any, against the demand, to the extent of the amount required for granting stay and subject to the provisions of section 245.”

14. It is not disputed that in terms of the instructions issued by the CBDT, in the given cases, the stay is required to be granted to the Assessee in respect of the disputed demands on the condition that the Assessee deposits an amount equal to 20% of the outstanding tax demand.

15. In the given circumstances, the effect of the Revenue adjusting refunds against the stayed demand would essentially place the Assessee that is entitled to a refund in a disadvantageous position *vis-a-vis* those assesses to whom no refund is due. It is also material to note that there is no allegation that the petitioner is alienating its assets so as to frustrate the recovery of any demand or that it would be unable to pay the disputed demand in the event the same was confirmed in the appellate proceedings.

16. In the given facts, we find merit in the contention that the Revenue’s decision to adjust the refund due to the petitioner for the AYs 2008-09 and 2017-18, is arbitrary. Concededly, the said issue is also covered by an earlier decision of this court in ***Eko India Financial Services (P.) Ltd. v. Assistant Commissioner of Income-tax, Circle-7(1): (2021) 132 taxmann.com 154 (Delhi)***. The relevant extracts of the said decision are set out below:



“10. Having heard learned counsel for the parties, this Court is of the view that the Government is bound to follow the rules and standards they themselves had set on pain of their action being invalidated. [See: Amrit Singh Ahluwalia vs. State of Punjab & Ors. 1975 (3) SCR 82 and Ramana Dayaram Shetty vs. International Airport Authority of India & Ors. 1979 SCR (3) 1014].

11. This Court is also of the view that the office memorandum dated 29th February, 2016 read with office memorandum dated 25th August, 2017 stipulate that the Assessing Officer shall normally grant stay of demand till disposal of the first appeal on payment of 20% of the disputed demand. In the event, the Assessing Officer is of the view that the payment of a lump sum amount higher than 20% is warranted, then the Assessing Officer will have to give reasons to show that the case falls in para 4(B) of the office memorandum dated 29th February, 2016.

12. This Court finds that the order under Section 245 of the Act for adjustments of refunds as well as the order on stay of demand under Section 220(6) of the Act do not give any special/particular reason as to why any amount in excess of 20% of the outstanding demand should be recovered from the petitioner-assessee at this stage in accordance with paragraph 4(B) of the office memorandum dated 29th February, 2016. Consequently, this Court is of the view that the respondent is entitled to seek pre-deposit of only 20% of the disputed demand during the pendency of the appeal in accordance with paragraph 4(A) of the office memorandum dated 29th February, 2016, as amended by the office memorandum dated 25th August, 2017.

13. Accordingly, the respondent no.1 is directed to refund the amount adjusted in excess of 20% of the disputed demand for the Assessment Year 2017-18, within four weeks. This Court clarifies that it is not granting any relief with regard to prayer (c), as the Principal Commissioner, Income Tax vide order dated 02nd July, 2021, as reproduced hereinabove, has already granted the said prayer.”

17. In view of the above, we consider it apposite to direct the Revenue to refund the amount due to the petitioner with applicable interest, in respect of the AYs 2008-09 and 2017-2018, as expeditiously as possible, and



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preferably within a period of eight weeks from date.

18. The petition is allowed in the aforesaid terms.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

DECEMBER 04, 2024/at