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

\+ W.P.(C) 10835/2024

HUAWEI TELECOMMUNICATIONS INDIA COMPANY PRIVATE LIMITED

.....Petitioner

Through: Mr Kamal Swahney, Mr Nikhil Agarwal and Mr Puru Medhira, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CENTRAL CIRCLE 2 & ANR.

.....Respondents

Through: Mr Indruj Singh Rai, SSC, Mr Sanjeev Menon and Mr Rahul Singh, JSCs and Mr Anmol Jagga, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

O R D E R

% **04.12.2024**

1. The petitioner has filed the present petition, *inter alia,* impugning an order dated 23.01.2024 issued under Section 245 of the Income Tax Act, 1961 (hereafter *the Act*) whereby the refund amount of ₹3,08,19,973/- due to the petitioner in respect of the assessment year (AY) 2022-23 was adjusted against an outstanding demand in respect of the AY 2018-19.

2. The petitioner’s case is that the demand for the AY 2018-19 has been stayed and, therefore, it is not permissible for the Revenue to adjust the refund amount against the stayed demand under Section 245 of the Act.

3. In the present case, the learned Income Tax Appellate Tribunal (hereafter *ITAT*) had passed an order dated 23.09.2022 staying the demand in respect of the AY 2017-18 and 2018-19 in the following terms: -

> "6. Considering the aforesaid factual position, we direct the assessee to pay a sum of Rs.10,00,00,000 against the aggregate outstanding demand, as a condition of stay.
> 7. We further direct, out of the amount of Rs.10,00,00,000 as directed, upfront, the assessee shall pay an amount of Rs.4,36,11,069 within four weeks from the date of this order. The balance amount of Rs.5,63,88,931 shall be paid by assessee after disposal of its rectification application, stated to be pending before the Assessing Officer/TPO, either by way of adjustment of refund, in case, it arises or assessee shall pay it within two weeks from the date of disposal of rectification application. Subject to the above, recovery of the balance outstanding demand shall remain stayed for a period of 180 days or till disposal of the corresponding appeal of the assessee, whichever is earlier."

4. The learned counsel appearing for the Revenue has confirmed that the demand for the AY 2018-19 had been stayed by the learned ITAT.

5. Concededly, the issue is covered by the earlier decision of this court in ***Lease Plan India & Another v. Deputy Commissioner of Income Tax : Neutral Citation:2012:DHC:5280 -DB*** wherein the court held as under:-

> "12. It is thus evident that in this case that the actions of the Revenue were violative of the stay order of this Court; they were also contrary to the provisions of Section 245 of the Income Tax Act. The term "recovery" includes adjustment of the refund due to the assessee. Thus, the High Court

> order which directed that the assessment proceedings "would not be given effect to without the leave of the court" translated to a bar on adjustments as well. Furthermore, Section 245 is clear in its mandate regarding the requirement of prior intimation in writing to the assessee whose refunds are being adjusted against amounts payable to the Revenue; the assessee has to be given notice, and heard. The revenue clearly did not follow the provision, and give any notice or hearing before making adjustments, impugned in this case."

6. In view of the above, the present petition is allowed and the Revenue is directed to refund the amount along with applicable interest, which has been adjusted contrary to the stay granted by the learned ITAT.

7. The petition is disposed of in the above terms.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

DECEMBER 04, 2024

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<u>*Click here to check corrigendum, if any*</u>