OD-41, 42 & 43

THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/581/2025
Danieli India Limited
Versus
The Union of India, through the Secretary,
Ministry of Finance, Department of Revenue & Ors.
And
WPO/582/2025
Danieli India Limited
Versus
The Union of India, through the Secretary,
Ministry of Finance, Department of Revenue & Ors.
And
WPO/583/2025
Danieli India Limited
Versus
The Union of India, through the Secretary,
Ministry of Finance, Department of Revenue & Ors.

Before:
The Hon'ble JUSTICE RAJA BASU CHOWDHURY
Date: 19th September 2025

Appearance:
Mr. Pranit Bag, Bar-at-Law
Mr. Anusko Das, Advocate
Mr. A. K. Dey, Advocate
for the petitioner

Mr. Prithu Dudhoria, Advocate
for the respondents

The Court: 1. All the three matters raised identical question and as such are taken up together.

2. The petitioner claims that the Income Tax Department should be directed to disburse interest in favour of the petitioners on the

amount which has been refunded pursuant to the order dated 1st September 2023.

3. According to Mr. Bag, learned advocate representing the petitioner, the petitioner had preferred a writ petition being WPO/2294/2022, inter alia, challenging the action of the Income Tax Authority in denying the admitted refund to the petitioner in respect of the assessment years 2010-11 and 2017-18 by making adjustment under section 245 of the Income Tax Act, 1961 (hereinafter referred to as "the said Act") for recovery of demand arising out of the assessment orders relating to the assessment years 2011-12, 2012-13 and 2013-14 without compliance of mandatory formality of making prior intimation to the petitioner before making such adjustment of demands, against which admittedly appeals are pending before the CIT (Appeals). By order dated 1st September 2023 a Coordinate Bench of this Court was, inter alia, pleased to dispose of the said writ petition by observing as under:

> *"Considering the facts and circumstances of the case as appears from record annexed to the writ petition, undisputed and admitted fact which emerge are as follows :*
>
> *1) That admittedly petitioner is entitled for refund in respect of assessment years 2010-11 and 2017-18;*
>
> *2) Admittedly statutory appeals before the CIT (Appeals) are pending against the assessment orders relating to assessment years 2011-12, 2012-13 and 2013-14 out of which demand has arisen and for recovery of the same by way of adjustment has been made from the refund relating to assessment years 2010-11 and 2017-18 ;*

3) Admittedly the amount recovered by way of adjustment from the admitted refund in respect of assessment year 2010-11 and 2017-18, for the demand relating to assessment years 2011-12, 2012-13 and 2013-14 are in excess of 20% of the demand.

The legal issue which petitioner has raised in this writ petition is that if at all the respondent Income Tax Authority can recover, can he recover more than 20% of the demand arising out of the relevant assessment orders against which appeals are pending, by way of making adjustment from the refund in respect of any other assessment years and petitioner submits that in this case admittedly the assessing officer has recovered more than 20% of the demand relating to assessment orders against which appeals are pending from the admitted refund in respect of other assessment years and such action of the assessing officer is not sustainable in law.

Petitioner in support of its contention has relied on a decision of this Court in the case of Graphite India Ltd. vs. Deputy Commissioner of Income Tax & Ors. reported in (2022) 448 ITR 292 (Cal) and submits that the aforesaid issue is directly covered in favour of the petitioner, by the aforesaid reported decision of this Court.

Considering the facts and circumstances of this case which appears from record and submission of the parties and the decision in the case of Graphite India Ltd. (supra), this writ petition being WPO 2294 of 2022 is disposed of by holding that the action of the assessing officer recovering amount in excess of 20% of the demand arising out of relevant assessment orders against which Appeals are pending before CIT

> *(Appeals) by way of adjustment from the admitted refund relating to other assessment years are arbitrary and not sustainable in law. Accordingly, the respondent Income Tax Authority concerned is directed to refund the amount in excess of 20% which has been recovered from the refund of assessment years 2010-11 and 2017-18 for recovery of the demand arising out of the assessment orders relating to assessment years 2011-12, 2012-13 and 2013-14 against which appeals are pending before the CIT (Appeals), within a period of four weeks from the date of communication of this order subject to verification of the actual amount recovered and for this purpose respondent Income Tax Authority concerned shall afford an opportunity of hearing to the petitioner if required for clarification in support of such claim.*
>
> *With these observations and directions, this writ petition stands disposed of.*
>
> *Affidavit in reply filed in Court be kept with the records."*

4. Mr. Bag would submit that though, pursuant to the aforesaid order the Department has disbursed the refundable amount which had been adjusted in excess of the 20% of the demand, however, no interest, as is required to be paid in terms of section 244A of the said Act, has been disbursed in favour of the petitioner. Mr. Bag insists that this Court should direct the Department to disburse the said interest which the petitioners are entitled to in accordance with law.

5. Having heard the learned advocates representing the respective parties, I am of the view that the right of the petitioner to be entitled to

the refund was considered by the Coordinate Bench of this Court by its order dated 1st September 2023. No direction for refund of the amount in excess of the 20% of the demand for the relevant assessment years alongwith the interest was made. What was directed was refund of the amount in excess of the 20% of the demand recovered from the petitioner from the refund of the assessment years 2010-11 and 2017-18. I have been able to ascertain from the learned advocates for the parties that the appeal filed before the CIT (Appeals) is still pending. No decision has been taken thereon. As such, at this stage, I am of the view that it is premature to grant any further relief to the petitioner apart from what have been granted by the order dated 1st September 2023. If the petitioner succeeds in the appeal, all consequences of such appellate order shall follow.

8. The writ petitioner is accordingly disposed of.

(RAJA BASU CHOWDHURY, J.)

R. Bose