

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2973 OF 2025

Fork Media Group Private Limited

.. Petitioner

Versus

Centralized Processing Centre,
Bengaluru [CPC] & Ors.

.. Respondents

VINA
ARVIND
KHADPE
Digitally
signed by
VINA
ARVIND
KHADPE
Date:
2026.01.01
17:02:14
+0530

**Mr. K. Gopal i/b Ms. Neha Paranjpe, *Advocates for the
Petitioner.***

***Mr. Akhileshwar Sharma*, Advocate for the Respondents.**

**CORAM: B. P. COLABAWALLA &
AMIT S. JAMSANDEKAR, JJ.**

Date: DECEMBER 24, 2025

P. C.

1. Rule. Respondents waive service. With the consent of the parties, Rule made returnable forthwith and heard finally.

2. The above Writ Petition is filed challenging the action of Respondent No. 2 in passing the order dated 19th December 2024 (page 139 of the Petition) without granting refund of Rs.56,81,075/- (adjusted amount of Rs.80,18,128/- minus 20% of the disputed demand of Rs.23,37,053/-). It was submitted that the refund of Rs.37,00,594/-for the Assessment Year 2022-23

and the refund of Rs.43,17,534/- for the Assessment Year 2023-24 was adjusted against the disputed penalty of Rs.1,16,85,263/- levied under section 270A of the Act for the Assessment Year 2021-22. Thus, Respondent No.1 has recovered a sum exceeding 20% of the disputed demand. The Petitioner, vide letters dated 11.11.2024, 16.12.2024 and again on 17th February 2025 submitted that the penalty levied for the Assessment Year 2021-22 is the subject matter of an appeal before the First Appellate Authority. Thus, as per the Instruction No.1914, dated 21st March 1996, as modified by Office Memorandum [F.NO.404/72/93-ITCC] dated 29th February 2016, and further by Office Memorandum [F.NO.404/72/93-ITCC] dated 31st July, 2017, issued by the CBDT, the department should recover only 20% of the disputed demand. The amount recovered over and above 20% of the disputed demand may be refunded and the outstanding demand may be stayed till the disposal of the appeal by the First Appellate Authority.

3. On the other hand, Mr. Akhileshwar Sharma, the Learned Advocate for the Respondents, does not dispute that the Respondents are duty bound to follow the Office Memorandum dated 31st July, 2017 and were required to confine the recovery/adjustment of 20% of the disputed demand which is the subject matter of appeal before the First Appellate authority. He however, submits that in the instant case the adjustment of more than 20% of the

demand out of the accrued refund is made by the CPC. He further submits that there is no *mala fide* on the part of the Respondents. Many a time there is a time lag or miscommunication between the Assessing Officer and the CPC which results in unintentional adjustment/recovery of more than 20% of the disputed demand which is subject matter of First Appeal. He further submits that the present proceedings is not an adversarial proceeding and prays that appropriate direction may be issued by this court.

4. Having heard both the parties, we noticed that in this case, the assessment was completed for the Assessment Year 2021-22 vide assessment order dated 23rd December 2022 passed under section 143(3) r.w.s 144B of the Act by reducing the loss to 37,48,863/- from Rs.7,37,54,036/- as declared in the return of income. The assessment order does not result into any demand. Pursuant to the same, the penalty order dated 21st June 2023 was passed under section 270A of the Act by levying a penalty of Rs.1,16,85,263/-

5. The said penalty order was challenged before the First Appellate Authority in the appeal instituted on 7th November, 2023. In the meantime, Respondent No.1 adjusted the refund of Rs.37,00,594/- arising in the Assessment Year 2022-23 and the refund of Rs.43,17,534/-arising in the Assessment Year 2023-24 against the disputed penalty of Rs.1,16,85,263/-

levied for the Assessment Year 2021-22 which is the subject matter of First Appeal.

6. We noticed that the Petitioner vide letters dated 11th November, 2024, 16th December, 2024 and 17th February, 2025, requested Respondent No.2, the jurisdictional Assessing Officer to refund the amount adjusted more than 20% of the disputed penalty. Respondent No.2, passed the order dated 19.12.2024 [being Exhibit "O"] giving reference to the said letters of the Petitioner wherein it is admitted that more than 20% of the disputed demand has been collected by way of refund adjustment pending the appeal before the First Appellate Authority. However, the excess adjusted amount was not refunded to the Petitioner.

7. We have gone through Instruction No.1914, dated 21st March 1996 as modified by Office Memorandum [F.NO.404/72/93-ITCC] dated 29th February 2016 and further by Office Memorandum [F.NO.404/72/93-ITCC] dated 31st July 2017 relied upon by the advocate for the Petitioner. The CBDT in the said Office Memorandum dated 31st July, 2017 streamlined the process of grant of stay and standardized the quantum of lump sum payment required to be made by the assessee as a pre-condition for stay of the demand disputed before the First Appellate authority. The said Office Memorandum

is clear that the Assessing Officer can insist on recovery of 20% of the disputed demand as a pre-condition for stay of the demand disputed. The said Office Memorandum, however, makes a provision of more than or less than 20% of the demand, in certain circumstances for which the Assessing Officer has to refer the matter to the administrative Pr. CIT/CIT, who after considering all relevant facts, would shall decide the quantum/proportion of demand to be paid by the assessee as lump sum payment for granting a stay of the balance demand.

8. In the present case, it is not disputed that the Assessing Officer has not received any direction from the PCIT to recover more than 20% of the disputed demand as a pre-condition for stay of the demand disputed. It is also not disputed that the Respondents have recovered by way of adjustment of refund, a sum which exceeds 20% of the disputed demand, which is the subject matter of an appeal before the First Appellate Authority. This action of Respondent No.1 is contrary to the instructions issued by the CBDT. Thus, in the facts of the present case, we direct the Respondents to retain 20% of the disputed penalty for the Assessment Year 2021-22 and the balance sum be refunded back to the Petitioner within a reasonable period.

9. Mr. Sharma, on instructions from the Assessing Officer, submits that a period of four weeks from the date of the uploading of this order is a reasonable period within which the Respondents would complete the refund as per this order. It is accordingly so ordered.

10. Rule is made absolute in the above terms and the Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

11. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[AMIT S. JAMSANDEKAR , J.]

[B. P. COLABAWALLA, J.]