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

% *Date of Decision: 30.04.2025*

+ **W.P.(C) 5636/2025 & CM Nos.25682/2025, 25684/2025**

M/S. CHEMESTER FOOD INDUSTRY PVT. LTD. ....Petitioner

Through: Mr N.P. Sahni, Mr K. Abbas and Mr  
Deepanshu Mehta, Advocates.

Versus

CENTRAL PROCESSING CENTRE AND ORS. ....Respondents

Through: Mr Vipul Agrawal, Ms Sakshi  
Sehrawat, Mr Akshat Singh and Mr  
Gaurang Ranjan, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**HON'BLE MR. JUSTICE TEJAS KARIA**

**VIBHU BAKHRU, J.**

1. The Petitioner [Assessee] has filed the present writ petition, *inter alia*, praying as under:

- “a) Issue a writ of mandamus directing the Respondent No.1 and 2 to immediately process and release the refund sum of Rs. 07,04,39,948/- for AY 2014-15 adjusted against the disputed demand for AY 2016- 17 in an illegal and arbitrary manner, along with statutory interest under Sections 244A and 244A(1A) of the Act from the date it became due until the date of actual payment;
- b) any other order, relief or direction, which this Hon'ble High Court deem fit & proper be passed in favour of the Petitioner.”



2. The Assessee impugns the intimation/order dated 16.02.2024 issued under Section 245 of the Income Tax Act, 1961 [**The Act**], whereby a refund of ₹7,04,39,948/- due to the Assessee for Assessment Year [**AY**] 2014-15 was set-off against an outstanding demand of ₹4,62,40,148/- (that is, ₹4,91,67,767/- less ₹29,27,619/-) for AY 2016-17, along with interest amounting to ₹3,11,05,731/-.

3. The Assessee is a firm engaged in the business of manufacturing and supply of supplementary nutritious foods to Integrated Child Development Scheme, Lucknow – contends that the adjustment of refund due to the Assessee in respect of AY 2014-15 against the outstanding demand for AY 2016-17 is patently illegal and contrary to the Office Memorandum dated 31.07.2017 issued by the Central Board of Direct Taxes. The Assessee contends that in terms of the instructions contained in the said Office Memorandum, the recovery of the disputed demands are required to be stayed on payment of 15% (modified to 20%) of such demand in cases where the assessment is under challenge in an appeal. The Assessee submits that the assessments in respect of AY 2016-17 are disputed and the Assessee's challenge to the same is pending.

4. The Assessee claims that a total refund of ₹9,60,74,456/- had been determined in respect of AY 2014-15. The Assessee states that the Assessing Officer [**AO**] had passed an assessment order dated 20.12.2016 in respect of AY 2014-15 determining its income at ₹34,68,09,650/- as against the returned loss of ₹42,445/-. The assessment order was subject matter of revision by the Principal Commissioner of Income Tax-2, New Delhi [**PCIT**] and in terms of an order dated 29.03.2019 passed under Section 263 of the Act, the AO was



directed to frame a fresh assessment for AY 2014-15. Pursuant to the said order, the AO passed a fresh assessment order dated 13.12.2019 under Section 143(3) read with Section 263 of the Act, enhancing the assessed income to ₹81,07,76,020/-.

5. The Assessee appealed the order dated 29.03.2019 passed under Section 263 of the Act before the learned Income Tax Appellate Tribunal [ITAT] [being ITA No.3707/Del/2019], the same was allowed by an order dated 09.06.2023 and the PCIT's order dated 29.03.2019 was set aside. Consequently, the assessment order dated 13.12.2019 did not survive. In the meanwhile, pursuant to the assessment order, the Assessee deposited a sum of ₹8,24,34,656/-.

6. Thereafter, the AO passed an appeal effect order dated 02.01.2024 to give effect to the learned ITAT's order allowing the Assessee's appeal. The AO admitted a refund of ₹8,24,34,656/- along with interest quantified at ₹1,36,39,800/- as on 09.01.2024 – thus, computing the total refund at ₹9,60,74,456/- [₹8,24,34,656/- plus ₹1,36,39,800/-] in respect of AY 2014-15.

7. However, the entire amount was not refunded to the Assessee. The AO, adjusted an amount of ₹40,70,155/- in respect of outstanding demand and interest in respect of AY 2017-18. The Assessee does not dispute the adjustment of an amount of ₹40,70,155/- from the amount for the confirmed demand as outstanding in respect of AY 2017-18. Thus, according to the Assessee a total amount of ₹9,20,04,301/- ( ₹9,60,74,456/- less ₹40,70,155/- ) was refundable after adjustment of the demand in respect of AY 2017-18.

8. The Assessee also does not dispute from the aforesaid amount, 20% of



the disputed amount in respect of AY 2016-17 was required to be paid in terms of the Office Memorandum dated 31.03.2017. It is the Assessee's case that since it had filed an appeal before the Commissioner of Income Tax(Appeals) [CIT(A)], which is pending since 25.01.2019, *inter alia*, impugning a demand of ₹4,91,67,767/-, 20% of the said amount (being ₹98,33,553/-) could be adjusted against the crystalised refund in respect of AY 2014-15. The Assessee further claims that out of the aforesaid amount, a sum of ₹29,27,619/- had already been adjusted from the refund due in respect of AY 2015-16. Thus, further sum of only ₹69,05,933/- [₹98,33,553/- being 20% of the disputed demand of ₹4,91,67,767/- less an amount of ₹29,27,619/- already recovered] could be further recovered on account of disputed demand for AY 2016-17 from the refund due in respect of AY 2014-15. In the aforesaid circumstances, the Assessee claims that it ought to have been refunded an amount of ₹8,50,98,367/-.

9. As against the aforesaid amount, the AO has adjusted the entire outstanding disputed demand of ₹4,91,67,767/- along with statutory interest amounting to ₹3,11,05,731/- in respect of AY 2016-17. The said amount has been recovered by adjusting the refund of ₹29,27,619/- in respect of AY 2015-16 and a sum of ₹7,73,45,879/- from the refund due in respect of AY 2014-15. The AO has refunded an amount of ₹1,46,58,419/- in respect of AY 2014-15 after making adjustments as set out above.

10. A tabular statement setting out the computation of the refund claimed by the Assessee is set out below:

| "Description | Amount (In Rs.) |
|--------------|-----------------|
|--------------|-----------------|



|                                                                                                                                        |                      |
|----------------------------------------------------------------------------------------------------------------------------------------|----------------------|
| Total refund for AY 2014-15 ( <b>Amount A</b> )                                                                                        | <b>9,60,74,456/-</b> |
| Less: Demand for AY 2017-18 (lawfully) <i>set off</i> against refund for AY 2014-15                                                    | 40,70,155/-          |
| <b>Amount B</b>                                                                                                                        | <b>9,20,04,301/-</b> |
| Less: Demand that should have been lawfully <i>set off</i> for AY 2016-17 as per binding CBDT memorandum against refund for AY 2014-15 | 69,05,934/-          |
| <b>Amount C</b>                                                                                                                        | <b>8,50,98,367/-</b> |
| Less: Refund released to Petitioner                                                                                                    | 1,46,58,419          |
| <b>Refund sum due to the Petitioner</b>                                                                                                | <b>7,04,39,948/-</b> |

11. In view of the above, the only question that needs to be addressed is whether the action of the AO to adjust the refund due for AY 2014-15 against the outstanding demand for AY 2016-17, is illegal and contrary to the Office Memorandum dated 31.07.2017.

12. Paragraph nos.3 and 4(A) of the Office Memorandum dated 29.02.2016 as modified by the Office Memorandum dated 31.07.2017 are relevant and are set out below:

“3. It has been reported that the field authorities often insist on payment of a very high proportion of the disputed demand before granting stay of the balance demand. This often results in hardship for the taxpayers seeking stay of demand.

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:

(A) In a case where the outstanding demand is disputed



before CIT (A), the assessing officer shall grant stay of demand till disposal of first appeal on payment of 15% of the disputed demand, unless the case falls in the category discussed in para (B) hereunder.”

13. It is clear from the language of the Office Memorandum that the instructions contained therein were issued to streamline the process of grant of stay and to standardise the quantum, lump sum payment required to be paid by the assessee “*as a pre-condition for stay of demand disputed before CIT(A)*”.

14. There is no cavil that it is also permissible to deposit the specified percentage (20%) of the disputed demand by adjustment of the refund due to the assessee. However, in the present case, the demand in respect of AY 2014-15 was subsisting on the date when the demand for AY 2016-17 was raised. The Assessee had sought stay of the demand by adjustment against the refunds due to it in respect of AY 2015-16, AY 2017-18 and AY 2018-19 (not AY 2014-15). However, the AO had not found the same permissible as on the said date.

15. The AO had sent a letter dated 29.04.2019 to the Assessee requesting the Assessee to pay a sum of ₹69,05,933/- for covering up the shortfall of 20% of the disputed amount for securing a stay of the balance amount. The said letter is set out below:

“F.No. Addl.CIT/Spl. R-2/2019-20

Dated: 29.04.2019

To,

The Principal Officer  
M/s Chemester Food Industry Pvt. Ltd.  
201-202, Pankaj House, H&J Block Market,



Sarita Vihar, Delhi-110076  
Sir,

**Subject: Outstanding demand for the AY 2016-17-reg.**

**(Ref: Your letter dt. 13.02.2019)**

Please refer to the above. It was proposed on behalf of your company that outstanding demand i.e. 20% of Rs.4,91,67,767/- be collected by adjustment of pending refunds for AY 2015-16, 2017-18 & 2018-19. In this regard, it is to be informed that refund of Rs.4,41,97,700/- for AY 2017-18 has been withheld u/s 241 A of the IT Act. Process for issue of refund for the AY 2018-19 has not yet started. So, outstanding demand cannot be adjusted from the refund of these two years.

2. There was suggestion in your letter for adjustment of refund of AY 2015-16 as well. Refund of Rs.29,27,620/- had arisen in this year after order u/s 154 dt. 19.02.2019 and it was adjusted. So, there was collection of Rs.29,27,620/- only. Balance recoverable demand comes to Rs.69,05,933/-. Under these circumstances, you are hereby requested to please pay the demand immediately.

Your faithfully,  
s/d

**(V.R. SONBHADRA)**

Addl. Commissioner of Income-tax  
Special Range-2, New Delhi"

16. Admittedly, the petitioner had not deposited a sum of ₹69,05,933/- for fulfilling the condition of 20% deposit of ₹4,91,67,767/- at the material time.

17. In view of the above, although the Assessee had preferred an appeal before the CIT(A) disputing the assessments for AY 2016-17 and had also sought a stay of the demand, but it had not deposited 20% of the shortfall to cover 20% of the disputed amount being ₹69,05,933/- (₹98,33,553/- being 20% of the disputed demand of ₹4,91,67,767/- less an amount of ₹29,27,620/- already recovered).



18. Since the Assessee had not fulfilled the condition for securing a stay of demand, the entire demand in respect of AY 2017-18 remained outstanding. The same has since been recovered from the refund due to the petitioner for AY 2014-15 that has arisen pursuant to the appeal effect order dated 02.01.2024. The Assessee was required to make the deposit of the shortfall to cover 20% of the disputed demand either by paying the amount or by adjustment of the refund due at the material time.

19. In view of the above, we are unable to accept that the adjustment of the amount is contrary to the Office Memorandum dated 31.07.2017 as claimed by the Assessee.

20. The petition is, accordingly, dismissed.

**VIBHU BAKHRU, J**

**TEJAS KARIA, J**

**APRIL 30, 2025**

**RK**

*Click here to check corrigendum, if any*