

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/116/2026

THE REFUGE AND ANOTHER
VS
INCOME TAX OFFICER, WARD 1(3), EXEMPTION, KOLKATA AND OTHERS

BEFORE:

The Hon'ble JUSTICE SMITA DAS DE

Date: April 30, 2026.

Appearance:

Mr. J. P. Khaitan, Sr. Adv.
Mr. Akhilesh Kumar Gupta, Adv.
Mr. Indranil Banerjee, Adv.
Mr. Subrata Mukherjee, Adv.
...for the petitioners

Mr. Tarak Nath Jaiswal, Adv.
Mr. Kuntal Kr. Goswami, Adv.
... for the respondents

The Court:-

1. The petitioner no. 1, in the instant case is a society registered under the Society Registration Act, engaged in charitable activities. It has filed Form 10A seeking registration under Section 12A(1)(ac)(iii) of the Income Tax Act, 1961 (hereinafter referred to as the said Act) for the Assessment Year 2022-23 to Assessment Year 2026-27. For Assessment Year 2021-22, it filed a return declaring Nil income and claiming a refund of Rs. 46,470/-.
2. In the instant case the return has been filed as 'Nil' return claiming refund of Rs. 46,470/- but the Assessing Officer by an order passed under

Section 154 of the said Act has assessed income and raised demand, being a high pitched assessment.

3. The petitioner preferred an appeal before respondent no. 4 being the appellate authority, which is presently pending for disposal. The appellate authority issued a notice to the petitioner directing, inter alia, to furnish written submission along with supporting evidences and/or documents as specified in the annexure. In compliance with the said directions, the petitioner uploaded its written submission which are still pending for consideration.

4. In the meantime, the Assessing Officer issued notices on various dates directing the petitioner to make payment towards outstanding demand along with applicable interest under Section 220 of said Act by paying at least 20% of the outstanding demands. It has been further stated that the assessee failing such payment would be treated as assessee in default.

5. The issue involved herein is whether the Order dated 13th February, 2023 passed under Section 154 of the said Act for Assessment Year 2021-22, whereby exemption claimed under Section 11 in Sl. No. 4(i) to 4(viii) in Schedule Part B-TI has been disallowed on the ground that details of registration under Section 12AB has not been provided in Schedule Part A General, and consequential adjustment of Rs. 96,580/- against refund due to the petitioner and issuance of recovery notices during the pendency of the appeal, are sustainable in law, particularly when the relevant document has been inadvertently omitted at the time of

filing return and the respondent authorities have been subsequently satisfied about the Section under which exemption has been claimed.

6. The Learned Senior Counsel appearing for the petitioners submit that the impugned order dated 13th February, 2023 deals only with the details of the new registration under the approval for claiming exemption under Sl. No. 4(i) to 4(viii) in Schedule Part B-TI and does not allow the exemption claimed.

7. It is contended that the details of the registration has been inadvertently omitted at the time of uploading the relevant documents while filing the return for the Assessment Year 2021-22. The petitioner has been granted registration under Section 12A(1)(ac)(iii) for Assessment Year 2022-23 onwards.

8. The Learned Senior Counsel draws the attention of this Court to Page No.125 of the writ petition to demonstrate that the respondent authority has already been satisfied upon being shown the relevant section under which exemption is sought.

9. The Learned Senior Counsel appearing for the petitioner also draws the attention of this Court to the impugned order dated 13th February, 2023 which is reproduced below:

"In Schedule Part A General -"Details of registration or approval under Income Tax Act" details of Section 12AB or 10(23C)(iv)/ 10(23C)(v)/ 10(23C)(vi)/ 10(23C)(via) is not provided in the column "Section under which the registration is applied. The Act has been amended from 01/06/2020, and all the entities have to get new registration/approval u/s 12AB or 10(23C)(iv)/ 10(23C)(v)/ 10(23C)(vi)/ 10(23C)(via) to be eligible for exemption. Since in your case, new registration/ approval

details are not available, exemption claimed in SI. No. 4i to 4viii in Schedule Part B-TI is no allowable.”

10. On 3rd March, 2023 a rectification request has been filed for rectifying mistake, however, the same has been rejected and exemption has been disallowed.

11. The petitioner places reliance upon the Division Bench judgment of this court in ***Great Barter Private Limited Vs. Assistant Commissioner of Income-tax reported at (2023) 455 ITR 452 Calcutta***. It has been held therein that when assessment are unreasonably high pitched and appeal is pending under CIT(A), recovery should remain stayed still disposal of appeal. In the present case, the return filed has been a Nil return claiming refund, but the Assessing Officer by an order passed under Section 154 of the said Act has assessed income and raised demand, being a high pitched assesement. The relevant paragraph of ***Great Barter Private Limited (supra)***, are reproduced below:

“11. It is an undisputed fact that as against the impugned assessment order, appeal has been filed before the Commissioner of Income-tax (Appeals), second respondent on 25th January, 2018. It is not clear as to why the appeal is pending before the Commissioner (Appeals) for more than two years. Identical issues have come up for consideration before various High Courts and we would refer to two of the decisions of the High Court of Delhi, namely, Valvoline Cummins Ltd. v. Dy, CIT (2008) 171/laxman 241/307 FTR 103/2008 (103) DRJ 567 (DB) and Soul v. Dy. CIT [2008] 173 Taxman 468/[2010] 323 ITR 305.

12. In both these cases, the Hon'ble Division Bench of the High Court of Delhi has considered high pitched assessments and has also taken note of the instruction issued by the CBDT and have held that when the assessments are unreasonably high

pitched, the notices of recovery should remain stayed till the disposal of the appeal by the first appellate authority. In cases on hand, the return filed by the assessee was a loss return. However, the assessing officer has assessed the income and it is definitely a high pitched assessment. That apart, we find that the appeal was filed before the Commissioner of Income Tax (Appeals) well within the period of limitation and is pending since 25th January, 2018.

13. That apart, we are informed by the learned Advocate appearing for the appellant that till date the notice of demand has not been enforced on the assessee. Thus, considering the peculiar facts and circumstances of the case, we are of the view that the appeal itself should be directed to be disposed of by the Commissioner of Income-tax (Appeals) at an early date and until then, recovery proceedings should be kept in abeyance.

14. In the light of the above, the appeals are allowed and the order passed in the writ petitions is set aside with a direction to keep the recovery notices issued by the assessing officer kept in abeyance and direct the Commissioner of Income-tax (Appeals), the appellate authority, to disposed of the appeals on merits and in accordance with law after affording an opportunity of personal hearing to the authorised representative of the assessee as expeditiously as possible preferably within a period of 45 days from the date of receipt of the server copy of this judgment and order.”

12. It is further submitted that the impugned order dated 13th February, 2023 has been passed without issuing notice under the Proviso to 154(3) in violation of natural justice. The adjustment of Rs. 96,580/- against refund and demand of 20% deposit during pendency of appeal is contrary to CBDT instruction No. 1914 dated 02.12.2023. Already the Centralized Processing Centre, Bengaluru, (CPC) has adjusted Rs.1,58,000.10 against the total amount of Rs.61,86,650/-.

13. *Per contra*, the Learned Counsel for the Revenue submits that since the petitioner did not file Form 10A prior to filing of the return, the exemption as claimed has been disallowed. For Assessment Year 2022-23, no valid registration under Section 12A/12AB existed on the date of filing return.

14. It is submitted that the petitioner did not make any application for stay before the Assessing Officer as a result of which an amount of Rs.96,580/- has been adjusted against the refunds due to the petitioner.

15. The respondent authorities relies upon ***Gouri Shankar Awasthi Vs. Income-tax Officer reported at 78 ITR 784 (Calcutta)*** wherein it has been held that this court should not interfere with a mere request letter for payment of tax outstanding in an application under Article 226 of the Constitution of India. The relevant paragraph of the Judgment in ***Gouri Shankar Awasthi Vs. Income-tax Officer (supra)*** is reproduced below:

*“Apart from this letter of the 20th; May, 1968, containing the order of the respondent No. 2 that stay of realisation cannot be granted, another letter of the respondent No. 2 has also been challenged in this application, that is, his letter of the 15th/28th June, 1968. In this letter the respondent No. 2 has reminded the petitioner of "tax outstanding" for, inter alia, the assessment year 1963-64 and has requested the petitioner to appear before him on a particular day. I do not see any reason why this court should interfere with a request of this kind in an application under article 226.
The result is that this application is dismissed. There will be a stay of operation of this order for four weeks.
There will be no order as to costs.”*

16. After hearing the rival contention of the parties and upon perusing the records the undisputed facts are as follows:

- a) Intimation dated 10.08.2022 under Section 143(1) accepted Nil income and granted refund of Rs. 46,470/-,*
- b) Order dated 13.02.2023 under Section 154 of the said Act withdrew exemption on the ground that new registration details Under Section 12AB did not form part of the Schedule Part A,*
- c) Rectification request details dated 03.03.2023 has been rejected,*
- d) Appeal is pending before the respondent No. 4 being the Appellate Authority and written submission have been filed,*
- e) Pending appeal Rs. 96,580/- has been adjusted against refunds and notices under Section 220 has been issued for 20% deposit,*

The proviso to Section 154(3) mandates prior notice and hearing if rectification enhances assessment or reduces refund. Admittedly the Order dated 13.02.2023 withdrew exemption and converted refund to demand and no notice has been issued by the respondent authorities violating principles of natural justice as held in ***Ajantha Industries Versus CBDT reported at (1976) 102 ITR 281 SC.***

17. The Division Bench in ***Great Barter (P) Ltd. (supra)*** held that when assessments are unreasonably high pitched and appeal is pending before CIT(A), recovery should remain stayed till disposal of appeal. The present case is a high pitched assessment, as a Nil return with refund claim has been converted into a demand. The appeal has been pending and written submissions have been filed, the ratio of the judgment squarely applies in the instant case.

18. The reliance placed by the respondent authorities on **Gouri Shankar Awasthi (supra)** is distinguishable both in facts as well as in law since the case pertains to mere request letter after expression refusal of stay whereas in the instant case the Order passed under Section 154 is *prima facie* without jurisdiction for breach of natural justice and adjustment of Rs. 96,580/- and has been made without prior intimation under Section 245 contrary to **LG Electronics India Private Ltd. Vs CIT reported at (2019) 417 ITR 1 SC.**

19. In view of the above, this Court is *prima facie* satisfied with the submissions made on behalf of the petitioner and interference is warranted at this stage. The respondent No.4 is thus directed to dispose of the appeal preferably within a period of six months by passing a reasoned and speaking order upon affording an opportunity of hearing to the petitioner in accordance with law and communicate such decision within a period of week thereafter.

20. However, it is made clear, until the appeal attains its finality, the respondent authorities are restrained from taking any coercive steps against the petitioner including the realization of any amount.

21. The Writ petition being WPO 116 of 2026 is disposed of without going into the merits of the case.

(SMITA DAS DE, J.)