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IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/1248/2023

M/S. ASA INTERNATIONAL INDIA MICROFINANCE LIMITED
VS
DEPUTY COMMISSIONER OF INCOME TAX,
CIRCLE 5(1), KOLKATA AND ORS.

BEFORE:
The Hon'ble JUSTICE SMITA DAS DE
Date : May 19, 2026.

Appearance:
Mr. J. P. Khaitan, Sr. Adv.
..for the appellant

Mr. Prithu Dudhoria, Adv.
Mr. Madhu Jana, Adv.
Mr. Wahed Reja, Adv.
..for the respondents

1. The present writ petition is directed against recovery of the demand for the assessment year 2011-12 to the extent of Rs.90,67,467/- during pendency of the appeal before the Commissioner of Income Tax (Appeals) by adjustment against refunds due to the petitioner for the assessment years 2014-15, 2015-16, 2016-17 and 2019-20.

2. On March 28, 2014 a demand of Rs.1,26,88,740/- has been raised for the assessment year 2011-12 consequent to an assessment order under section 143(3) of the Income Tax Act, 1961 (“the Act”) passed on that date. Against the said assessment order, the petitioner preferred an appeal before the Commissioner of Income tax (Appeals) on April 28, 2014.

3. Between September 2014 and February 2015, the petitioner deposited a sum of Rs.63,48,000/- being a little over 50% of the demand. The Particulars of the said payments are reflected in Form 26AS of the petitioner for the assessment year 2011-12.

4. It is further submitted that on February 29, 2016, an office memorandum was issued by the Central Board of Direct Taxes stating that in a case where the outstanding demand is disputed before Commissioner of Income Tax (Appeals), the Assessing Officer shall grant stay of demand till disposal of first appeal on payment of 15% of the disputed demand. The said rate has been subsequently revised to 20% by office memorandum dated 31.7.2017.

5. Despite the petitioner having deposited more than 50% of the disputed demand prior to 29.2.2016 the following refunds have been adjusted on 02.11.2017 against the disputed demand for Assessment year 2011-12, Rs. 13,99,940/- for Assessment Year 2013-14, Rs. 10,78,100/-, for Assessment Year 2014-15 and Rs. 38,62,706/- for Assessment Year 2016-17, respectively.

6. Though the rate of 15% went up to 20% because of the office memorandum dated July 31, 2017, the petitioner's entitlement to stay remained unaffected since it had deposited more than 50% of the disputed demand.

7. On March 3, 2020 the Assessing Officer issued garnishee notices under section 226(3) of the Act to the petitioner's Bankers for recovery of the disputed demands for Assessment years 2011-12 and 2012-13.

8. On March 17, 2020, the petitioner requested withdrawal of garnishee notices and offer to pay Rs. 3,76,950/- to make up 20% of the demands. The garnishee notices have been withdrawn on the same day as refund of Rs.

1,67,50,378/- for Assessment Year 2017-18 has already been adjusted against Assessment Year 2012-13 on 28.2.2020.

9. Thereafter on May 21, 2020, interest under section 220(2) of the Act for which demand was raised on October 30, 2017 has been recovered by way of adjustment against refund due to the petitioner for the assessment year 2019-20. Such recovery is reflected in Form 26AS for the assessment year 2011-12.

10. In aggregate, a sum of Rs.90,67,467/- has been recovered from the petitioner for the assessment year 2011-12 despite payment of over 50% of the disputed demand during the pendency of the appeal before the Commissioner of Income Tax (Appeals).

11. The learned counsel for the respondent submits that Section 245 expressly permits the Assessing Officer to set off refunds against any sum payable by the assessee. Section 220(6) vests discretion in the Assessing Officer to treat the assessee as not being in default. Thus stay is not automatic. The OM of CBDT is directory and not mandatory.

12. The sole issue involved in the present case is as follows:

Whether the Assessing Officer's action of adjusting refunds aggregating Rs. 90,67,467/- and issuing garnishee notices under Section 226(3) of the Income Tax Act, 1961 for recovery of disputed demand for assessment year 2011-12 is illegal and contrary to binding CBDT office memorandum dated 29.2.2016 and 31.7.2017 when the petitioner has already deposited more than 50% of the demand and is entitled to automatic stay during pendency of appeal before CIT(A).

13. After hearing the rival contention of the parties and upon perusing the records made available it appears that the adjustment of refund for Assessment Years 2014-15, 2015-16, 2016-17 and 2019-20 against the demand for Assessment Year 2011-12 is unsustainable in light of the judgment/order passed by the coordinate Bench of this Court in **DANIELI INDIA LIMITED** (supra) and **GAURAV ENTERPRISES** (supra) and decision dated 12.5.2026 in WPO/139/2026 (Bothra Shipping Services vs. Union of India). Accordingly, respondent authorities are directed to release a sum of Rs. 90,67,467/- for the assessment year 2011-12 along with interest under Section 244A within six weeks from the date of communication of this order, since the petitioner has already deposited more than 50% of the disputed demand.

14. The Assessing Officer shall not take any coercive steps for recovery of demand for Assessment Year 2011-12 until the appeal pending before Commissioner of Income Tax (Appeals) is disposed of. The CIT(A) is directed to dispose of the pending appeal in a time bound manner preferably within 8 weeks from the date of communication of this order.

15. In view of the above, the Writ Petition being **WPO No. 1248 of 2023 is disposed of** without going into the merits of this case. No order as to costs.

16. Urgent photostat certified copy of this order, if applied for, be given to the learned counsel for the parties on usual undertakings.

(SMITA DAS DE, J.)

bp.