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IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/1249/2023

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 petitioner in the present case, inter alia, challenges the recovery of the disputed demand for the assessment year 2012-13 during the pendency of the petitioner's appeal before the Commissioner of Income Tax (Appeals) by adjusting refunds due to the petitioner for the assessment years 2018-19, 2019-20, 2020-21, 2021-22 and 2022-23.
2. The petitioner's assessment for the assessment year 2012-13 was completed on March 19, 2015 under Section 143(3) of the Income Tax Act, 1961 ("the Act") raising a demand of Rs.48,95,220/-. A further demand of Rs.7,99,50,700/- was raised for Assessment Year 2011-12. The petitioner preferred appeal before Commissioner of Income Tax (Appeals) on 24.01.2020.

Prior thereto on 22.01.2020 an application for rectification and stay of demand was filed.

3. On December 25, 2019, a re-assessment order was passed under Sections 144/147 for the said assessment year raising a demand of Rs.7,99,50,700/-.

4. 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.

5. On March 17, 2020, the petitioner applied for adjustment of its refunds for Assessment Year 2017-18 and undertook to pay a further sum of Rs.3,76,950/- so that 20% of the disputed demand stood paid.

6. The garnishee notices were withdrawn on 17.03.2020, since a refund of Rs.1,67,50,378/- for Assessment Year 2017-18 was already adjusted on 28.02.2020. Against the said disputed demand a further sum of Rs.3,76,950/- was paid on 19.03.2020.

7. In view of the said office memoranda dated February 29, 2016 and July 31, 2017, the petitioner has already paid more than 20% of the disputed demand, it was entitled to stay of the balance outstanding disputed demand. In the instant case, there is nothing to show that the Principal Commissioner of Income Tax/Commissioner of Income Tax had decided that there should be payment of a lumpsum amount higher than 20% of the disputed demand. The petitioner had prayed for stay in its letter dated March 17, 2020 addressed to the Assessing Officer. By withdrawing the garnishee notices, the Assessing Officer granted such request.

8. Notwithstanding the same between May, 2020 and December, 2022, the Department adjusted further refunds aggregating Rs.8,98,17,185/- for Assessment Years 2018-19 to 2022-23 against the disputed demands.

9. The petitioner through learned Senior counsel submitted that action of the Assessing Officer in issuing garnishee notices and adjusting refunds is contrary to the binding CBDT Office Memoranda dated 29.2.2016 and 31.07.2017.

10. The petitioner is entitled to stay of recovery as more than 20% of the disputed demand has been adjusted.

11. It is further submitted that adjustment of Rs.8,19,18,502/- without notice under Section 245 of the Act is illegal. Coercive recovery during pendency of appeal before CIT(A) is violation of principles of natural justice.

12. The learned counsel for the respondents 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.

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

Whether refunds for the Assessment Years 2018-19 to 2022-23 can be adjusted against disputed demand for Assessment Years 2011-12 and 2012-13 during pendency of appeal when 20% of disputed demand has already been paid as per CBDT OM dated 29.02.2016 and 31.07.2017.

14. After hearing the rival contention of the parties and upon perusing the records made available, this Court finds that the petitioner has complied with the CBDT Office Memorandum dated 31.07.2017 by paying more than 20% of

the disputed demand for Assessment Years 2011-12 and 2012-13. There is no order from the principal Commissioner directing payment higher than 20%. Therefore, the petitioner is entitled to stay of recovery. The adjustment of refunds amounting to Rs.8,98,17,185/-, specifically Rs.8,19,18,502/- without issuing prior intimation under Section 245 of the said Act runs contrary to law. The action of the Assessing Officer is unsustainable in light of the judgment of the Co-ordinate Bench of this Court in ***Danieli India Limited Vs. Assistant CIT***, reported at **2023 (9) TMI 1726**, ***Gaurav Enterprises Vs. Union of India*** reported at **2025(12) TMI 624** and decision dated 12.05.2026 in WPO/139/2026 (***Bothra Shipping Services Pvt. Ltd Vs. Union of India***).

15. In view of the above, the Writ Petition being **WPO No. 1249 of 2023 is disposed of** with the following directions:-

- a) The respondents are directed to release a sum of Rs.8,98,17,155/- for the Assessment Years 2018-19 to 2022-23 along with interest under Section 244A within six weeks from the date of communication of this order.
- b) The Commissioner of Income Tax (Appeals) is directed to dispose of the pending appeal in a time bound manner, preferably within eight weeks from the date of communication of this order.
- c) The Assessing Officer shall not take any coercive steps for recovery of the demand for Assessment Year 2012-13 until the appeal pending before Commissioner of Income Tax (Appeals) is disposed of.

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.