



2026:DHC:2013-DB



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

Date of decision: 9th March, 2026

+ W.P.(C) 2932/2026 & CM APPL. 14140/2026

ORAVEL STAYS LIMITED

.....Petitioner

Through: Mr. Ajay Vohra, Sr. Advocate with
Mr. Manuj Sabharwal, Advocate.

versus

COMMISSIONER OF INCOME-TAX (TDS)-2, DELHI & ORS.

.....Respondents

Through: Mr. Puneet Rai, SSC.

CORAM:

HON'BLE MR. JUSTICE DINESH MEHTA

HON'BLE MR. JUSTICE VINOD KUMAR

J U D G M E N T

DINESH MEHTA, J. (ORAL)

1. By way of present writ petition, the petitioner-assessee has challenged order of the Commissioner of Income Tax (TDS-2), Delhi (*hereinafter referred to as 'Appellate Authority'*) passed on 09.02.2026, vide which the petitioner's stay application has been disposed of in the manner that subject to payment of 20% of the total demand, remaining demand shall remain stayed.

2. Mr. Ajay Vohra, learned Senior Counsel assisted by Mr. Manuj Sabharwal appearing for the petitioner firstly invited Court's attention towards the orders dated 31.03.2025 passed in petitioner's own case (Annexure P-12 & P-13) for assessment years 2018-19 and 2019-2020,



respectively and argued that the predecessor of the Assessing Officer himself had held the petitioner not to be in default and regardless of the fact-situation remaining the same, the Assessing Officer, this time has held the petitioner-assessee to be in default.

3. He then submitted that the Income Tax Appellate Tribunal, Bench 'E' New Delhi (*hereinafter referred to as 'the Tribunal'*) vide its order dated 21.11.2025 in no ambiguous terms has held that in the present factual backdrop, the petitioner was not required to deduct tax and hence no disallowance could be made and in spite of the fact that such order was brought to his notice, the respondent no.1 neither dealt with nor has he followed the same and has passed the impugned order subjecting the petitioner to the condition of deposit of 20% of the outstanding demand in complete disregard of the law and order of the Tribunal.

4. He argued that if the impugned order is not interfered with, it shall prejudice petitioner's substantial rights in spite of the fact that the final fact finding authority namely the Tribunal has ruled in its favour.

5. Mr. Puneet Rai, learned Senior Standing Counsel, while not disputing the factum of passing of the order of Tribunal dated 21.11.2025, argued that since limitation for filing appeal is still not over, it cannot be said that it has attained finality because final decision on the question is yet to come from this Court.

6. He, also didn't point out anything to distinguish the facts involved in the present case from the facts involved in the Tribunal's order. He nevertheless argued that the interim order cannot be claimed as a matter of right and the same is within the discretion of the Assessing Officer and Appellate Authority, which discretion should not be upturned unless any



glaring facts come to the notice of this Court.

7. Heard learned counsel for the parties.

8. We are not oblivious of legal position that in the matters relating to stay, more particularly, in the matters relating to stay of demand in fiscal matters, the Court should be loathe to interfere. But the case in hands is one which calls for our interference, because of the striking features available in the present case.

9. The Tribunal vide its order dated 21.11.2025 in petitioner's own case, for the very same assessment year while dealing with the issue of disallowance of expenditure has clearly recorded a finding that the assessee was not required to deduct tax at source and therefore, such finding being a finding of fact and decision on the requirement of deduction of tax, had a necessary bearing which not only Assessing Officer but also the Appellate Authority should have taken into consideration while deciding the stay application.

10. That apart, in petitioner's own case, it has been held to be 'an assessee not in default' vide orders dated 31.03.2025 (Annexure P-12 and P-13). Such being the position, we are of the view that the petitioner-assessee cannot be called upon to pay 20% of the outstanding demand, as has been ordered by the Appellate Authority. Because in any case the amount levied under Section 201(1A) of the Act of 1961 is a penalty and not any sort of tax on petitioner's income.

11. The impugned order dated 09.02.2026 so also order dated 11.09.2025 (Annexure P-2) passed by the respondent no.2 are therefore, quashed and set aside.

12. The stay application filed by the petitioner is allowed in the manner



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that during the pendency of the appeal, the petitioner shall not be required to pay any part of the demand raised by the Assessing Officer vide its order dated 18.11.2022 (Annexure P-3). The Appellate Authority shall, however, decide the appeal expeditiously, as the demand has been stayed.

13. Needless to say that we have not recorded any finding or made observation on the merit of the case. Whatever has been observed is relevant only to the extent of deciding the requirement of payment during pendency of appeal. The Appellate Authority shall therefore, independently apply its mind on the facts and law involved in the present case, including the order of the Income Tax Appellate Tribunal dated 21.11.2025 and decide the appeal in accordance with law.

14. The writ petition is disposed of in the aforesaid terms alongwith pending application(s).

DINESH MEHTA
(JUDGE)

VINOD KUMAR
(JUDGE)

MARCH 9, 2026/nk