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

\+ W.P.(C) 773/2026, CM APPLs. 15391/2026, 15396/2026 & 3745/2026

CLEAN SOLAR POWER (JODHPUR) PRIVATE LIMITED .....Petitioner

Through: Mr. S. Ganesh, Sr. Adv. with Mr. Yash Srivastava, Ms. Satakshi Sood, Ms. Naimishi Verma & Ms. Dirshti Kochhar, Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX CIRCLE 4 (2) NEW DELHI AND ORS .....Respondents

Through: Mr. Anurag Ojha, SSC with Mr. V.K. Saksena & Ms. Hemlata Rawat, JSCs.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE VINOD KUMAR

O R D E R

% **13.03.2026**

DINESH MEHTA, J. (ORAL)

1. Ms. Hemlata Rawat, learned Junior Standing Counsel for the respondents at the outset submitted that the appeal which was pending before the Commissioner of Income Tax (Appeals) *(hereinafter referred to as 'Appellate Authority')* has now been decided vide order dated 17.02.2026 and therefore the instant writ petition which was preferred against rejection of the stay application by the Assessing Officer has been rendered infructuous.

2. Mr. S. Ganesh, learned Senior Counsel for the petitioner, on the other hand, submitted that the petitioner has preferred an amendment application being CM APPL. 15396/2026 and has sought leave to challenge the order

dated 17.02.2026 passed by the Appellate Authority by contending that a 70 page order has been passed without recording any reasons and without dealing with the contentions of the petitioner-company so also the judgments that were cited by the petitioner-company.

3. He prayed that amendment application be allowed and the order of the Assessing Officer so also the Appellate Authority be decided on merits by the High Court.

4. Having heard learned counsel for the parties, we are not inclined to continue with the writ petition which was essentially preferred against order dated 03.10.2025, whereby stay application filed by the petitioner-company was rejected by the Assessing Officer. Because the stay application was only for the period up to decision of the appeal and the appeal itself has been decided by the Appellate Authority.

5. The petitioner has a remedy of filing an appeal before the Income Tax Appellate Tribunal under Section 253 of the Income Tax Act, 1961. We fail to accept any reason for which the petitioner should not avail the statutory remedy of appeal before the Tribunal.

6. We, therefore, dispose of the present writ petition and close the proceedings at this stage itself, however with a direction that in case, the petitioner prefers an appeal alongwith the stay application, the recovery of the demand against the petitioner-company shall remain stayed for four weeks from today.

7. It is made clear that we have passed this order in peculiar facts and circumstances of the case considering what we had noticed on the previous date of hearing i.e. 20.01.2026. The relevant part of the said order is reproduced herein:

"2. Learned Senior Counsel argued that the aforementioned office memorandum provides for automatic stay of the demand, in case an assessee deposits 20% amount of the disputed demand, whereas, in case the assessee claims that the demand itself to be unsustainable, stay application cannot be rejected simply by asking an assessee to deposit 20% amount, without looking into the merit of the contentions and grounds raised in the stay application.

3. Taking the Court through the impugned assessment order dated 20.03.2025, he argued that a simple look at the assessment order shows that it is in relation to alleged unexplained purchase of capital assets as per provisions contained in Section 69 of the Income Tax Act, 1961. He argued that the expenditure which are duly reflected in the books of accounts (which have been audited twice) cannot be said to be an unexplained.

4. Usually, we would not have indulged in the present writ petition when the matter relates to rejection of stay application but considering the submissions noted hereinabove, we are of the view that if the demand appears to be unsustainable on the face of it, the Assessing Officer ought not to have rejected the stay application mechanically, more so, in light of the Office Memorandum of CBDT, without dealing with the grounds taken in the stay application."

8. We request the Income Tax Appellate Tribunal to decide petitioner's stay application expeditiously, in case it has been filed within four weeks' from today.

9. With these observations, the writ petition stands disposed of alongwith pending applications.

10. The next date of hearing (09.04.2026) stands cancelled.

DINESH MEHTA, J.

VINOD KUMAR, J.

MARCH 13, 2026/*sr*