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

+ W.P.(C) 7290/2022 & CM APPLs.22355-22356/2022

KSHIPRA JATANA Petitioner

Through: Mr. Vikram Kakar, Advocate.

versus

ASSTT. COMMISSIONER OF INCOME TAX CIRCLE 63(1) &
ORS. Respondents

Through: Mr. Kunal Sharma with Ms. Zehra
Khan and Mr. Shray Nargotra,
Advocates.

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Date of Decision: 20th May, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petition has been filed seeking refund of Rs.1,52,240/- which was recovered in excess of 10% of the total disputed tax demand for the Assessment Year 2017-18 against the refunds due for the Assessment Year 2020-21.

2. Learned counsel for the Petitioner states that Rs.1,52,240/- in excess of the 10% of the disputed demand has been recovered on 7th September, 2021 from the refunds determined by the Respondents under Section 143(1) of the Income Tax Act, 1961 [for short 'Act'] for the Assessment Year

2020-21 despite a stay order dated 11th March, 2020 in favour of the Petitioner whereby PCIT-21 had granted stay of the demand till the disposal of the first appeal or 30th September, 2020 whichever was earlier. He states that the petitioner preferred an application dated 31st January, 2022 before the respondents for extension of stay of demand as granted vide order dated 11th March, 2020 and not to take any coercive measures for recovery of demand till the disposal of the appeal. He, however, states that said application is pending disposal till date.

3. Learned counsel for the Petitioner further points out that no notice under Section 245 of the Act has been issued to the Petitioner, which is a mandatory requirement before adjusting any refund due to the Petitioner. He states that the adjustment has been made in violation of the principle of natural justice as no opportunity of being heard had been granted to the Petitioner prior to such adjustment.

4. Mr. Kunal Sharma, learned counsel for the Respondents-Revenue on instruction states that an adjustment order under Section 245 of the Act had been passed on 28th January, 2022. He further states that as the stay order dated 11th March, 2020 was limited in time, the respondent was well within its right to adjust the refund.

5. This Court is of the view that the restrictive stay order dated 11th March, 2020 issued by the Respondents granting stay to the petitioner only till 30th September, 2020 is in violation of the directions of the CBDT as well as previous orders of this Court wherein it has been held that the Assessing Officer must grant stay till the disposal of the first appeal.

6. Also, keeping in view the fact that the adjustments have been made on 7th September, 2021 i.e. prior to issuance of a set off of refund order dated

28th January, 2022 under Section 245, this Court is of the opinion that the Petitioner is entitled to refund of adjustment made in excess of 10% of the total disputed tax demand.

7. Consequently, this Court directs the respondents to refund to the petitioner the amount adjusted in excess of 10% of the disputed tax demands for the Assessment Year 2017-18 within four weeks along with statutory interest. With the aforesaid direction, the present writ petition and applications are disposed of.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

MAY 20, 2022
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