

(2023) 03 CHH CK 0084
In the Chhattisgarh High Court
Case No : Writ Petition (T) No. 81 Of 2023

Adhiraj Cements

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 31-03-2023

Acts Referred:

Income Tax Act, 1961 — Section 220(6)

Citation : (2023) 03 CHH CK 0084

Hon'ble Judges : P. Sam Koshy, J

Bench : Single Bench

Advocate : Abhishek Sinha, Sidharth Dubey, Himanshu Sinha, Tushar Dhar Diwan, Manish Sharma, Ajay Kumrani, Amit Choudhary

Final Decision : Allowed

Judgement

1. Aggrieved by the order Annexure P/21 dated 23.03.2023 the present writ petition has been filed. Vide the impugned order the claim of the petitioner for waiver of payment of pre-deposit in the course of filing of the appeal challenging the assessment order 22.09.2022 has been summarily rejected by the ITA-3(1) Raipur, directing the petitioner to first deposit atleast 20 percent of the demand raised.

2. The short question of law involved in the present writ petition is as to whether the Commissioner, Income Tax could have passed such an order without passing a speaking order on the application for grant of exemption or waiver that the petitioner has filed along with his appeal dated 21.10.2022. The appeal was filed assailing the assessment order dated 22.09.2022, Annexure P/2.

3. The contention of the petitioner is that when an appeal is filed before the Commissioner assailing the order of an Assessment Officer along with an application for waiver of the pre-deposit, the authorities concerned have to pass a specific speaking order in respect of the same before proceeding further with the appeal on its own merits including that of the application for grant of stay, if

any.

4. According to the counsel for the petitioner the officer has discretion, subject to such conditions that he may think fit to impose, in the facts and circumstances of the case so far as the requirement of pre-deposit is concerned. He refers to Section 220(6) of the Income Tax Act, 1961 in this regard. The counsel for the petitioner relied upon a decision of the Delhi High Court in Dr. BL Kapur Memorial Hospital Vs. Commissioner of Income Tax (TDS) Delhi-1 and Ors, WPC No.16287/2022 and other connected matters which stood decided on 25.11.2022 and also another decision of the Delhi High Court in TATA Teleservices Limited Vs. Commissioner of Income Tax, International Taxation-3& Another, decided on 23.03.2022, WPC No.4660 of 2022. In both these writ petitions, the Delhi High Court has relied upon decision of the Supreme Court in case of PCIT Vs. M/s LG Electronics India Pvt. Ltd. 2018(18)SCC447 whereby the tax authorities have been held to have the discretion while considering the grant of stay, exemption or waiver on the deposit of amounts lesser than 20 percent of the disputed amount in demand, in the facts and circumstances of the case.

5. The counsel for the respondents however submits that it is a case where the order though has been passed by the Commissioner but under the provisions of law the petitioner could have moved an application before the Principal Commissioner by way of a Review. Therefore the writ petition should not be entertained at this juncture. However, perusal of the impugned order would show that the concerned authorities before passing the impugned order Annexure P/21 dated 23.03.2023 taking the opinion from the Principal Commissioner Income Tax itself dated 13.03.2023. The operative part of the impugned order is the observations made by the Principal Commissioner himself and it is that which is reproduced in the impugned order seeking for the demand of payment of atleast 20 percent of the demand. Prima facie from the impugned order itself it reflects that it is an order which has been passed at the behest of the Principal Commissioner Income Tax itself. Thus, in the said circumstances the contention of the respondents that the petitioner have a remedy of review would be only an empty formality and would not serve any purpose by relegating the petitioner to approach the reviewing authority.

6. It would be relevant at this juncture to refer to the decision of the Delhi High Court in the aforesaid two decisions in case of TATA Teleservices (Supra) and also that of Dr. BL Kapur Memorial Hospital (Supra). What clearly culled out from the aforesaid two judgments is that the provisions of Section 220(6) of the Income Tax Act provides sufficient discretion with the authorities on an application seeking waiver of the pre-deposit at the time of filing of the appeal. The judgments further would give a clear indication that upon an application when made the authorities concerned has to consider the same objectively and take a decision keeping in view the facts and circumstances of the case as has been raised in the appeal itself. The application cannot be summarily rejected as in the manner the impugned order has been passed which does not give any reasons as

to why the application of the petitioner was not worth consideration or the reasons which led to the authorities for directing the petitioner herein to first make 20 percent of the demanded amount as pre-deposit.

7. For ready reference paragraphs 7 and 8 of Delhi High Court in Dr. BL Kapur Memorial Hospital (Supra) is reproduced hereinunder:

"7. Having heard learned counsel for the parties and having perused the two Office Memorandums in question, this Court is of the view that the requirement of payment of twenty per cent of disputed tax demand is not a pre-requisite for putting in abeyance recovery of demand pending first appeal in all cases. The said pre-condition of deposit of twenty per cent of the demand can be relaxed in appropriate cases. Even the Office Memorandum dated 29 th February, 2016, gives instances like where addition on the same issue has been deleted by the appellate authorities in the previous years or where the decision of the Supreme Court or jurisdictional High Court is in favour of the assessee. In fact, as pointed out by the learned senior counsel for the petitioner, the Supreme Court in the case of PCIT vs. M/s LG Electronics India Pvt. Ltd. (supra) has held that tax authorities are eligible to grant stay on deposit of amounts lesser than twenty per cent of the disputed demand in the facts and circumstances of a case.

8. In the present cases, the impugned orders are non-reasoned orders. Neither the Assessing Officer nor the Commissioner of Income Tax have either dealt with the contentions and submissions advanced by the petitioner nor has considered the three basic principles i.e. the prima facie case, balance of convenience and irreparable injury while deciding the stay application."

8. So also paragraph 6 of the Delhi High Court in TATA Teleservices Ltd. (Supra) is reproduced hereinunder:

"6. In fact the Supreme Court in the case of PCIT vs. M/s LG Electronics India Pvt. Ltd. (2018) 18 SCC 447 has held that tax authorities are eligible to grant stay on deposit of amounts lesser than twenty percent of the disputed demand in the facts and circumstances of a case. The relevant portion of the said judgment is reproduced hereunder:

'Having heard Shri Vikramjit Banerjee, learned ASG appearing on behalf of the appellant and giving credence to the fact that he has argued before us that the administrative Circular will not operate as a fetter on the Commissioner since it is a quasi-judicial authority, we only need to clarify that in all cases like the present, it will be open to the authorities, on the facts of individual case, to grant deposit orders of a lesser amount than 20%, pending appeal."

9. In the given facts and circumstances of the case, this court is also inclined to allow the present writ petition at the admission stage itself. The impugned order dated 23.03.2023 for the aforesaid reasons stands set aside/quashed.

10. The writ petition stands allowed. The respondents are directed to reconsider the application of the petitioner seeking waiver of the pre-deposit filed along with

the appeal on its own merits in accordance with law keeping in view the provisions under Section 220(6) of the Income Tax Act. Let the respondent authorities take an appropriate decision at the earliest before initiating co-ercive steps against the petitioner pursuant to the Assessment order Annexure P/2.

11. So far as the other reliefs that the petitioner has sought for, are left open to be considered at the appropriate stage, if required.