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

+ W.P.(C) 16287/2022

DR B L KAPUR MEMORIAL HOSPITAL Petitioner
Through: Mr. Ajay Vohra, Senior Advocate &
Ms. Kavita Jha & Mr. Himanshu
Aggarwal, Advocates.

versus

COMMISSIONER OF INCOME TAX (TDS)
DELHI 1 & ORS. Respondents

Through: Mr. Puneet Rai, Senior Standing
Counsel for Revenue.

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+ W.P.(C) 16288/2022

DR B L KAPUR MEMORIAL HOSPITAL Petitioner
Through: Mr. Ajay Vohra, Senior Advocate &
Ms. Kavita Jha & Mr. Himanshu
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versus

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Counsel for Revenue.

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Date of Decision: 25th November, 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):

CM APPL. 50982/2022 (for exemption) in W.P.(C) 16287/2022
CM APPL. 50984/2022 (for exemption) in W.P.(C) 16288/2022

Exemptions allowed, subject to all just exceptions.

Accordingly, the present applications are disposed of.

W.P.(C) 16287/2022 & CM APPL. 50981/2022
W.P.(C) 16288/2022 & CM APPLs. 50983/2022

1. Present writ petitions have been filed challenging the orders dated 06th September, 2022 and 07th November, 2022, rejecting the applications filed by the petitioner and directing the petitioner to make payment to the extent of 20% of total tax demand arising under Section 201(1) of the Income Tax Act, 1961, (for short 'the Act') for Assessment Years 2013-14 and 2014-15.

2. Learned senior counsel for the petitioner states that respondent No.2 passed orders dated 30th March, 2021 under Section 201(1) / 201(1A) of the Act holding the petitioner to be an 'assessee-in-default' for short deduction of tax at source and total tax liability was computed at Rs.16,47,35,035/- and Rs.20,09,39,099/- for Assessment Years 2013-14 and 2014-15 respectively. He states that aggrieved by the orders dated 30th March, 2021, the petitioner filed appeals before respondent No.3 along with an application seeking stay on the recovery of demand.

3. Learned senior counsel for the petitioner states that the respondent No.2 passed the orders dated 06th September, 2022, whereby the stay applications filed by the petitioner were dismissed in a non-speaking manner

and the petitioner was directed to pay twenty per cent of the disputed demand. He states that the petitioner filed applications dated 20th September, 2022, before respondent No.3 for review of the stay orders dated 6th September, 2022. He, however, states that the impugned orders dated 7th November, 2022 were passed rejecting the stay applications of the petitioner without dealing with the contentions raised by the petitioner.

4. Learned senior counsel for the petitioner submits that the petitioner has executed contracts for service and not contract of service with its consultant doctors. He further states that as the consultant doctors have paid their tax dues, the first proviso to Section 201 is attracted to the present cases.

5. Learned senior counsel for the petitioner further states that respondents while disposing of the petitioner's applications have failed to appreciate that the condition under impugned Office Memorandum dated 31st July, 2017, read with the Office Memorandum dated 29th February, 2016, stating that, "the assessing officer shall grant stay of demand till disposal of the first appeal on payment of twenty per cent of the disputed demand", is merely directory in nature and not mandatory. In support of his submission, he relies on the decision of the Supreme Court in *Pr. CIT v LG Electronics India (P) Ltd., 303 CTR 649 (SC)* wherein it has been held that it is open to the tax authorities, on the facts of individual cases, to grant stay against recovery of demand on deposit of a lesser amount than 20 per cent of the disputed demand, pending disposal of appeal.

6. Issue notice. Mr. Puneet Rai, learned counsel for the respondents-Revenue, accepts notice. He states that the consultant doctors of the petitioner are not allowed to work in any other hospital. Consequently,

according to him, the consultant doctors have executed a contract of service and not a contract for service. He also submits that the first proviso to Section 201 is not attracted to the present cases.

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 29th 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.

9. Consequently, the impugned orders and notices are set aside and the matters are remanded back to the respondent No.1-Commissioner of Income Tax for fresh adjudication in the application for stay. However, before

deciding the stay application, the Commissioner of Income Tax shall grant a personal hearing to the authorised representative of the petitioner. For this purpose, list the matter before the respondent No.1-Commissioner of Income Tax on 12th December, 2022.

10. It is clarified that till the stay applications filed by the petitioner are not decided, no coercive action shall be taken by the respondents against the petitioner in pursuance to the demands arising out of the impugned orders. With the aforesaid directions, the present writ petitions along with pending applications stand disposed of.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 25, 2022

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