

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 12123 of 2023

M/s. Legend Steel Pvt. Limited *Petitioner*

-versus-

Union of India and others *Opposite Parties*

Advocates appears in the case:

For petitioner: Mr. Jagabandhu Sahoo, Sr. Advocate
Ms. Kajal Sahoo, Advocate

For Opp. Parties: Mr. S.S. Mohapatra,
Senior Standing Counsel (Revenue)

CORAM:

**JUSTICE ARINDAM SINHA
JUSTICE SANJAY KUMAR MISHRA**

Date of judgment: 27.06.2023

ARINDAM SINHA, J.

1. Mr. Sahoo, learned senior advocate appears on behalf of petitioner-assessee. He submits, there was reassessment made on 31st March, 2022, whereby his client's income was added by Rs.5,57,50,296/- under section 68 of Income Tax Act, 1961. His client preferred appeal on 28th April, 2022 and also, by letter of same date,

applied for stay before the Assessing Officer (AO). He submits, impugned is letter dated 17th January, 2023, by which, without application of mind, there was direction to pay 20% of outstanding demand as per CBDT office memorandum dated 31st July, 2017.

2. He relies on **order dated 8th August, 2017** of a Division Bench in Delhi High Court in **W.P.(C) no.6778 of 2017 (LG Electronics India Private Limited v. PCIT)** to submit, on appeal and stay application preferred before the PCIT beyond the period of limitation, mechanical direction to pay 20% of tax demand was held to be without reasons. Paragraphs 5, 6, and 7 are reproduced below.

“5. The contention of the Petitioner is that the limitation period, in terms of Section 275 (1) (a) of the Act, had already expired. Aggrieved by the above order dated 20th July, 2017, the Petitioner went before the PCIT who, by the impugned order dated 2nd August, 2017, disposed of the application of the Petitioner by the following order sheet entry.

“Present Sh. Vishal Rastogi, AGM of LG requested to make payment of 20% of the tax demand of 32Cr. Amounting to 6.4 Cr. by 11.08.2017 to get stay of demand upto 15.12.2017”

6. *Mr. Deepak Chopra, learned counsel for the Petitioner, has produced before this Court a copy of OM dated 31st July, 2017 which modifies the earlier OM, dated 29th February, 2016, issued by the Central Board of Direct Taxes ('CBDT'), stating that standard rate for grant of stay had been revised from 15% to 20% of the disputed demand.*

7. *The impugned order clearly makes no reference to the central issue in the pending appeal or the grievance of the Petitioner regarding the order passed by the AO. The impugned order in short is without reasons and is therefore unsustainable in law."*

(emphasis supplied)

He submits, the matter went to the Supreme Court. It was dealt with by order dated 20th July, 2018 on **PCIT v. LG Electronics India Private Limited** reported in (2018) 18 SCC 447. He submits, the Supreme Court declared that the administrative circular will not operate as a fetter on the Commissioner since, it is a quasi judicial authority. He submits further, the principle applies to the AO. In impugned letter, where the AO appears to be uncertain regarding filing of the appeal, he has acted mechanically and not exercised the discretion given under sub-section (6) in section 220. The appeal having had been filed and stay application

by the letter remaining pending, the AO was required to adjudicate the question of stay and not simply rely on the administrative order.

3. Mr. Mohapatra, learned advocate, Senior Standing Counsel appears on behalf of revenue and prays for adjournment to obtain instruction on the fact of stay application filed.

4. We are not inclined to grant adjournment. This is because it will appear from impugned letter that the ITO was uncertain on whether stay application had been filed elsewhere, that is before appellate authority. That means, the stay application made before the AO was not considered for order being made under sub-section (6) of section 220. We quote below relevant sentence from impugned letter.

“If you have applied for stay of above-mentioned demands, please furnish the copy of the order of the stay of demand granted, if any.”

On our above appreciation of the fact situation, it is not necessary for us to express any opinion on the orders of the Delhi High Court and the Supreme Court, relied upon by petitioner.

5. Impugned letter is set aside and quashed. The AO is directed to consider the stay application by letter dated 28th April, 2022 and pass order under provision in sub-section (6) in section 220. It goes without

saying that action taken consequent to impugned letter also stands quashed.

6. The writ petition is disposed of.

(Arindam Sinha)
Judge

(S.K. Mishra)
Judge

Sks



Signature Not Verified

Digitally Signed
Signed by: SISIR KUMAR SETHI
Designation: PERSONAL ASSISTANT
Reason: Authentication
Location: ORISSA HIGH COURT
Date: 27-Jun-2023 17:47:44

