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Bombay High Court restricts adjustment of refund against outstanding demand to the amount prescribed for obtaining stay of demand

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Category - Adjustment of refund against outstanding demand

Outcome - In favour of the assessee

Background

The Bombay High Court in the case of Vrinda Sharad Bal (the assessee) directed the Revenue to refund the excess amount adjusted against the outstanding demand, over and above the amount prescribed for obtaining stay on demand in accordance with the Instructions and Office memorandum issued by the Central Board of Direct Taxes (CBDT).

Brief Facts and Contentions

- The assessee, an individual and proprietor, filed an Income Tax Return for AY 2013-14, which was selected for scrutiny under section 143 of the Income Tax Act (the Act). The assessment order was passed against the assessee and accordingly, a notice of demand was issued.
- The assessee preferred an appeal against the assessment order, during the pendency of which, refunds pertaining to Assessment Years 2014-15, 2015-16 and 2016-17 were adjusted against the outstanding demand.
- Thereafter, the assessee, applied for stay on recovery of tax demand. The Assessing Officer (AO) granted the stay on the recovery of the balance demand, while reserving the right to adjust other refunds arising to the assessee against such balance demand.
- Subsequently, refunds for AY 2018-19 and 2019-20 were adjusted against the outstanding demand. The assessee made multiple representations/ raised grievances before authorities for payment of refund to the petitioner and finally filed a writ petition before the High Court.
- Before the High Court, the assessee submitted that the condition in the stay order regarding the reservation of the right to adjust the refund against the outstanding demand was illegal and without jurisdiction. Referring to the Office Memorandum dated 29th February, 2016, the assessee contended that right to adjust refunds against demand was limited to the extent of the amount required for granting stay and subject to Section 245. Therefore, the right to adjust refund is limited to 20% of demand, in accordance with the latest guidelines prescribed by CBDT.
- The assessee argued that the amount adjusted against outstanding demand was more than the prescribed limit of 20% and she was therefore entitled to a refund of the excess so adjusted. The assessee also stressed upon the financial difficulties that businesses were facing in view of the pandemic and the ensuing lockdown and stated that she was finding it difficult to arrange day-to-day administrative and operating expenses.
- The Revenue however, contended that it was entitled to adjust refunds due against outstanding demand as per the provisions of the Act. Further, the Revenue submitted that its action was not unnatural and was in accordance with Clause 10 of the Central Processing of Return of Income Scheme, 2011 (the Scheme) which states that set-off refund against tax payable shall be done by using details of outstanding tax demand lying against the person as uploaded onto the system of the Centre by the AO.

Judgement of the High Court

- The High Court observed that introduction of the Scheme pursuant to sub-section 143(1A) of the Act is with a view to process the return expeditiously. It remarked that the Scheme would have to be read along with other provisions of Act and would take within its fold, instructions issued by CBDT from time to time.
- It was remarked that “*the exercise of power to have set off / adjustment of refund is regulated by legislative provisions and instructions*” and that the directions under Clause 10 would have to correspond to the operating provisions and instructions.
- It was held that it would be erroneous to consider that all refunds arising are liable to be adjusted against the tax demands, irrespective of orders thereon by the authorities and / or subsisting instructions and provisions applicable.
- Finally, the High Court directed that the amount recovered from petitioner was over and above the amount prescribed as per instructions, circulars, etc. Therefore, the excess collection over and above the amount required for stay shall have to be returned to petitioner along with applicable interest. Further, it was stipulated that further refunds would not be adjusted till disposal of the appeal against the assessment order of 2013-14.

Nangia Andersen LLP's Take

The Indian judiciary has time and again proved that it is committed to providing a fair, courteous and impartial treatment to the taxpayers. The judgement comes as a respite during these testing times when businesses are under financial strain. It shall strengthen the spirits of those taxpayers as the adjustment of refund against the outstanding demands shall be limited to the amount specified in the instructions/ guidelines issued by the CBDT (i.e. the amount required for obtaining stay). The judgement highlights that the provisions of the law and corresponding instructions/ guidelines must be read together for proper interpretation. Any instruction read in isolation, makes a position incongruous.

Past Precedents on the Issue

In the case of *Jindal Steel and Powers Limited*¹ the High Court of Punjab and Haryana held that power to adjust refund against the demand is limited to amount directed to be deposited as a condition of stay and AO is not supposed to act contrary to the instructions by the CBDT. Similarly, in the case of *M/s Andrew Telecommunications India Private Limited*² the Bombay High Court held that refund could be adjusted only to the extent of 15%³ and order adjusting refund over and above said amount was liable to be quashed. These two judgements have been relied upon in the instant case as well.

¹ Jindal Steel And Power Ltd. Vs. Principal Commissioner of Income Tax And Another [2017] 391 ITR 42 (P&H)

² M/s. Andrew Telecommunications India Pvt. Ltd. Vs. Principal Commissioner of Income Tax, reported in 295 CTR 557 (Bom)

³ erstwhile provision, latest rate- 20%

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