VS. — WPO No. 780/2025

2026:CHC-OS:153 IN THE HIGH COURT AT CALCUTTA CONSTITUTIONAL WRIT JURISDICTION ORIGINAL SIDE BEFORE: THE HON'BLE JUSTICE OM NARAYAN RAI WPO 780 OF 2025 P. S. SRIJAN HEIGHT DEVELOPERS VS. ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE 32, KOLKATA & OTHERS For the Petitioner : Mr. Abhratosh Majumdar, Sr. Adv. Mr. Saumya Kejriwal, Adv. Ms. Ananya Rath, Adv. Mr. Navin Mittal, Adv. Mr. Debarghya Banerjee, Adv. For the Respondents : Mr. Tarak Nath Jaiswal, Adv. Mr. Madhu Jana, Adv. Hearing Concluded on : 26.02.2026 Judgment on : 04.05.2026 Om Narayan Rai, J.:-

1. This writ petition under of the Constitution of India assails recovery of disputed demand for the assessment year 2018-19 by way of adjustments from refund made in the intimation dated October 25, 2022 issued under of the Income Tax Act, 1961 (hereafter "the 1961 Act") for the assessment year 2021-22 and the communication dated November 11, 2023 issued under of the 1961 Act for the assessment year of 2022-23. The petitioner has prayed for immediate release of an amount of Page 1 of 33 2026:CHC-OS:153 Rs.1,16,96,443/- recovered in excess of 20% of the disputed demand for the assessment year 2018-19 along with appropriate interest under L88: of the 1961 Act. FACTS OF THE CASE: > f. On November 10, 2023 the petitioner received another notice under of the 1961 Act by which the refund determined in favour of the petitioner was proposed to be adjusted against outstanding demands of Rs.37,740/- for the assessment year 2016-17 and Rs. 2,63,64,130/- for the assessment year 2018-19. The said notice granted the petitioner a period of 21 days to take action there-against but way before expiry of the notice period, on the very next day of the notice i.e. November 11, 2023, the entire refund of Rs.1,64,03,820/- was adjusted against the demand for assessment year 2018-2019. g. The petitioner disputed the adjustment of refunds against demands arising for the assessment year 2018-19 by a letter dated January 08, 2025 and requested the respondent to release a sum of Rs. 1,16,96,443/- which had been adjusted from the sums refunded to the petitioner by the Revenue for the assessment year 2021-22 and 2022-23 in excess of 20% of the disputed Page 3 of 33 2026:CHC-OS:153 demand for the assessment year 2018-19. Request was also made to grant stay of the demand till disposal of the pending appeal. However nothing was done by the Revenue. The petitioner followed up the said request by another letter dated September 02, 2025 which too went unheeded. Hence the present writ petition. SUBMISSIONS ON BEHALF OF THE PETITIONER:

3. Mr. Majumder, learned Senior Advocate appearing on behalf of the petitioner made the following submissions:- 2 W.P.(C) 2659/2012, decided on March 14, 2013 3 [2022] 448 ITR 292 (Cal) Page 6 of 33 2026:CHC-OS:153 i. Two unreported decisions of the Co-ordinate Benches of this Court in the case of 2(were also cited for the same proposition. j. A decision of the Hon'ble Supreme Court in the case of ■cite■22†Assistant Commissioner of Income-Tax vs. Rajendra Kumar■ 6 was next cited to demonstrate that the aforesaid judgment of the Hon'ble Rajasthan High Court had been carried in SLP before the Hon'ble Supreme Court but the Revenue did not press the matter on merits and prayed only for waiver of costs. k. A judgment of the Hon'ble Division Bench of the Hon'ble Bombay High Court in the case of M/s. ■cite■23†Andrew Telecommunications India Private Limited vs. Principal Commissioner of Income Tax & Others■ 7 was next pressed into service for the proposition that a sum in excess of the threshold percentage of the disputed demand (which was 15% at the material point of time) as mentioned in the relevant office memorandum cannot be recovered by the Assessing Officer if an appeal against an assessment order is pending. l. It was next submitted that the provisions of and of the 1961 Act must be read harmoniously in order to ensure that an assessee who had preferred an appeal against an assessment order was not 4 W.P.O. No. 2294 of 2022, decided on September 01, 2023 5 W.P.O. No. 700 of 2025, decided on December 01, 2025 6 [2023] 154 taxmann.com 534 (SC) 7 2016 SCC OnLine Bom 9925 Page 7 of 33 2026:CHC-OS:153 unduly treated as an assessee in default by the Assessing Officer by exercising discretion wrongly. g. He referred to a print out of the "Respond to Outstanding Demand User Manual" (hereafter "User Manual") downloaded from the website of the Revenue and sought to demonstrate that the petitioner did not respond to the outstanding demand and register his protest against the adjustment. He pointed at "Step 2" in the said User Manual and indicated that various 12 [2025] 174 taxmann.com 791 (Delhi) Page 10 of 33 2026:CHC-OS:153 reasons had been enlisted therein from amongst which the petitioner could have chosen the reason appropriate for it. h. He also cited the intimation issued to the petitioner for the assessment year 2022-2023 under of the 1961 Act and submitted that the said intimation contained a note that the refund determined in the intimation along with interest under of the 1961 Act was subject to adjustment of outstanding demand(s), if any, under of the 1961 Act. He asserted that the petitioner ought to have objected against the outstanding demand in the manner indicated in the User Manual upon receipt of the intimation under of the 1961 Act. i. Reliance was also placed on a judgment of this Court in the case of 13 to assert that mere filing of an appeal does not amount to stay. > Page 12 of 33 2026:CHC-OS:153 d. The Court was taken through the provisions of and of the 1961 Act and it was asserted that adjustment could never be made unilaterally without affording any opportunity to the assessee to object to the same.

6. Both the parties have attempted to distinguish the judgments cited by each other. ANALYSIS & DECISION:

7. Heard learned Advocates for the respective parties and considered the material on record.

8. While there is no period of limitation prescribed for invocation of writ remedies under of the Constitution of India, it is now well settled that a writ petition must be filed with utmost expedition and within a reasonable time. Before addressing the issue of delay, the foundational parameters set by the Hon'ble Supreme Court as regards the point of delay need to be noticed. The said adjustment will, in any case, be subject to the result of the pending appeal filed by the assessee against the assessment order dated September 11, 2021.

13. The next intimation under of the 1961 Act is dated November 10, 2023. The writ petition has been filed nearly two years after the said date, which means its institution is within the period prescribed for filing a suit for the same relief. There is however, no explanation as to why the writ petition could not be instituted earlier. Nonetheless, having regard to the fact that the case involves allegedly illegal adjustment of refunds against disputed tax demand, where - neither any right has accrued to a third party owing to the delayed approach; nor is there a case of waiver of the right of the petitioner to get the adjusted amount refunded, since the adjustments that have been made Page 16 of 33 2026:CHC-OS:153 would, in any case be subject to the pending appeal, therefore this Court is disinclined to dismiss the writ petition at the threshold. > "9. Though, it is described as a discretion, but, in fact, an assessee has a right to invoke such discretion. When such discretion is invoked, the Assessing Officer has to exercise the discretion having regard to the facts and circumstances of the case judiciously and in the process, it may exercise the discretion either in favour or against the assessee. From the plain language used in the section, it can be

contended that the Assessing Officer may exercise the discretion suo motu. But such discretion can be exercised only where an appeal is preferred. Such information can be brought within the notice of the Assessing Officer by the assessee. In the process, it is up to the assessee to make an application seeking to invoke the discretion. Therefore, an application is not forbidden or prohibited. The expression used in this sub-section makes it clear that the scope of making an application is implicit in the section.

24. In the present case it has been noticed that no application under of the 1961 Act has been filed by the petitioner before the relevant Assessing Officer seeking stay of the demand (i.e. not to treat the assessee in default). The Assessing Officer would therefore be quite justified in proceeding with adjustment of refund with the outstanding demand but then, such adjustment should conform to the requirements of of the 1961 Act as discussed earlier.

25. It is evident from records that prior intimation under of the 1961 Act was given on November 10, 2023 allowing the assessee 21 days to respond thereto, but the refunds were adjusted on the following day itself. This Page 22 of 33 2026:CHC-OS:153 constitutes a clear breach of the authority to adjust in terms of the aforementioned provision.

26. Once an intimation/notice under of the 1961 Act was issued indicating a period of 21 days for taking "action", the right of the petitioner to file objection thereto got activated, which in turn would have invoked the Assessing Officer's discretion under of the 1961 Act to treat the petitioner as not in default. Such right, therefore, could not have been abruptly foreclosed by the Revenue. In fact, if mere filing of appeal would have amounted to stay of demand or would have led to the assessee not being treated in default, then by that logic the requirement of making any payment or deposit, not to speak of 20% of the disputed demand, would not have been there at all. Moving further, if the lodgement of appeal would mean that the assessee would not be in default, the provision of of the 1961 Act which allows the Assessing Officer to exercise discretion not to treat an assessee in default would also be rendered meaningless. The Assessing Officer would be left with nothing to exercise Page 25 of 33 2026:CHC-OS:153 discretion for. Therefore, this Court respectfully disagrees with the observations made in (supra) to the limited extent "that once an appeal is filed within the time in the prescribed format, the assessee will not be deemed as an "assessee-in-default."

35. However, this Court hastens to add that while there is no dearth of jurisdiction in the Assessing Officer to treat the assessee in default in absence of an order staying the demand as aforesaid, yet when the Assessing Officer would proceed to adjust any sum from the amounts refundable to the assessee by exercising discretion under of the 1961 Act, it would be incumbent on the Assessing Officer to keep in mind the guidelines framed by the Revenue (as indicated in the Instruction dated February 02, 1993 and the Office Memorandum dated February 29, 2016, July 31, 2017 and August 25, 2017) for the purpose of granting stay inasmuch as the discretion under of the 1961 Act can be exercised suo motu as well.

39. Insofar as the Revenue's contention that the petitioner ought to have responded to or objected to the outstanding demand in terms of the User Manual is concerned, the same also does not appeal at all. When a clear and specific notice under of the 1961 Act was issued to the petitioner Page 28 of 33 2026:CHC-OS:153 the same in any case acted as a fresh statutory trigger to object thereto which statutorily over-rid the general "Outstanding Demand" dashboard status. The notice granted a specific time-bound opportunity to the petitioner to object to the proposed adjustment. In such view of the matter, it cannot be argued that the demand stood "confirmed" because the petitioner did not proactively dispute it on the portal earlier.

40. As regards the contention of the Revenue that the petitioner delayed the disposal of the appeal, I find that the argument is not without substance. Indeed, the petitioner has failed to file the written submissions within the time indicated by the appellate authority and prayed for adjournments on three occasions. That however, does not justify the illegal adjustment by the Revenue. Moreover, it has been rightly contended by the petitioner that the Revenue had adjusted the amounts much prior to the dates when the notices calling upon the petitioner to file written submissions were issued. The belated filing of written submissions by the petitioner therefore cannot, in the facts of this case, help the Revenue.

44. The order of the Hon'ble Supreme Court in the case of (supra) is clearly an order in the facts of the case. The very opening words of the said order dismissing the SLP make it clear that the same has been passed "In the facts of" the case. The facts of the present case being evidently different from the facts of (supra), the said order cannot help the Revenue at all.

45. Chemester Food Industry Private Limited (supra) is again a case where the Assessing Officer had found that grant of stay was not permissible. Such is not the case here. Page 31 of 33 2026:CHC-OS:153

46. In (supra), an Hon'ble Division Bench of this Court had declined to interfere with an order of refusal to stay the demand by the assessing officer. It was observed that recovery could not be stopped merely because an appeal had been preferred. The same is also of no avail to the respondent in the facts of the present case.

47. From the above discussion it is evident that the Revenue has acted in abject violation of the law governing adjustments under of the 1961 Act. The appeal filed by the petitioner is yet to be disposed of despite passage of more than four years. That being so the Respondent Revenue Authorities are directed to refund the amounts adjusted in excess of 20% of the disputed demand pertaining to assessment year 2018-19 as informed to the petitioner by the intimation dated November 11, 2023 (at page 164 of the writ petition) within a period of eight weeks from the date of communication of this order.

50. Urgent photostat certified copy of this order, if applied for, be supplied to the parties on urgent basis after completion of necessary formalities. (Om Narayan Rai, J.) Page 33 of 33