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

\+ **WP (C) No. 6956/2009**

Date of Decision : February 24, 2009

TANEJA DEVELOPERS & INFRASTRUCTURE LTD.

.....Appellant

Through : Mr. M.S. Syali, Sr. Advocate with Mr. Satya Sethi and Ms. Vidushi Chandna, Advocates

Versus

ASSISTANT COMMISSIONER OF INCOME TAX, DELHI & ORS.

.....Respondents

Through : Ms. Prem Lata Bansal and Mr. Rajiv Rajpal, Advocates

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether the judgment should be reported in the Digest?

SANJAY KISHAN KAUL, J. (Oral)

Rule DB.

Counsel for the respondent states that she wants to take instructions.

List for directions on 13th March, 2009.

CM No. 2320/2009(stay)

Notice which is accepted by learned counsel for the respondents.

Heard learned counsel for the parties.

Learned counsel for the petitioner submits that the returns for the year 2005-06 filed by the petitioner declared total income of Rs. 46,41,070/- while the assessment order in respect of the said year assessed the income at Rs. 1,67,02,35,990/- which is almost 350 times the returned income. The same is stated to be on account of two additions made. The first addition of Rs. 1,46,55,94,922/- is on account of alleged unaccounted sales while a sum of Rs. 20,00,00,000/- is on account of cash credits. Learned counsel for the petitioner submits that this alleged unaccounted sales have also been added as income in the hands of sister concerns and in so far as cash credits are concerned the details of the pan number of the assesses who have carried out the transaction has been furnished to the department.

The sum and substance of the submission of the learned counsel for the petitioner, at this stage, is that the impugned order dated 7.1.2009 by the Commissioner of Income Tax directing the deposit of 50% of the outstanding demand as per

schedule laid down in the order is contrary to the circulars of the department itself which form a part of judicial adjudication.

In respect of the aforesaid, learned counsel has invited our attention to the judgment of the Division Bench of this Court in ***Valvoline Cumins Ltd. v. DCIT (2008) 307 ITR 103 (Del.)*** where the relevant circular has been dealt with in the following terms:-

> "It may be recalled that the returned income of the assessee was Rs. 7.25 crores, but the assessed income is Rs. 58.68 crores, which is amount 8 times the returned income. In this regard, learned counsel has drawn our attention to Instruction No. 96 dated August 21,1969 issued by the Central Board of Direct Taxes, which deals with the framing of an assessment which is substantially higher than the returned income. The relevant portion of the Instruction reads as follows:-
>
> > "1222. *Income determined on assessment was substantially higher than returned income.-* Whether collection of tax in dispute is to be held in abeyance till decision on appeal.
> >
> > 1. One of the points that came up for consideration in the 8th meeting of the Informal Consultative Committee was that income-tax assessments were arbitrarily pitched at high figures and that the collection of disputed demands as a result thereof was also not stayed in spite of the specific provision in the matter in section 220(6).
> >
> > 2. The then Deputy Prime Minister had observed as as under:-
> > '…. where the income determined on assessment was substantially higher than the returned income, say, twice the latter amount or more, the collection of the tax in dispute should be held in

abeyance till the decision on the appeals, provided there were no lapse on the part of the assessee.'

3. The Board desire that the above observations may be brought to the notice of all the Income-tax Officers working under you and the powers of stay of recovery in such cases up to the stage of first appeal may be exercised by the Inspecting Assistant Commissioner/Commissioner of Incom-tax."

A perusal of paragraph 2 of the aforesaid extract would show that where the income determined is substantially higher than the returned income, that is, twice the latter amount or more, then the collection of tax in dispute should be held in abeyance till the decision on the appeal is taken. In this case, as we have noted above, the assessment is almost 8 times the returned income. Clearly, the above extract from Instruction No. 96 dated August 21, 1969 would be applicable to the facts of the case.

Learned counsel for the assessee has drawn our attention to several decisions of various High Courts which have interpreted the aforesaid Instruction in the way that we have read it. Some of these decisions are *N. Rajan Nair v. ITO [1987] 165 ITR 650 (Ker), Mrs. R. Mani Goyal v. CIT [1996] 217 ITR 641 (All) and I.V.R. Constructions Ltd. v. Asstt. CIT [1998] 231 ITR 519 (AP)*

Under the circumstances, we are of the view that the assessee would, in the normal course, be entitled to an absolute stay of the demand on the basis of the above Instruction. "

(emphasis supplied)

Learned counsel for the respondent seeks to plead that the aforesaid circular does not reflect the current procedure being followed by respondent in view of a subsequent Instruction No.

1914. However, this very instruction, as pointed out by learned senior counsel for the petitioner, has once again been considered by the Division Bench of this court in ***Soul vs. Dy. CIT (2008) 173 Taxman 468 (Del.)***.

The judgment in ***Soul*** *(supra)* has considered the impact of circular No. 1914 of 1993 vis a vis a judgment in ***Valvoline Cumins ltd.*** (Supra) and thus a similar submission as is sought to be advanced by the learned counsel for the respondent before us was advanced before that court.

The Division Bench dealt with it in the following manner:-

> "6. The issue that has been raised for the present, by the petitioner is with regard to the de-sealing of the bank accounts on account of the fact that returned income was approximately Rs. 10.16 lacs whereas the assessed income is very high pitched in the sense that it is approximately 74 times of the returned income. The learned Counsel for the petitioner submitted that in view of this fact alone, the petitioner would be entitled to a stay and, therefore, the impugned notices ought to be quashed. The learned Counsel for the petitioner placed reliance on a decision of this Court in the case of Valvoline Cummins Ltd. v. Dy. Commissioner of Income Tax (2008) 217 CTR 292. This Court, in that case, considered Instruction No. 96 dt. 21st Aug., 1969 issued by the Central Board of Direct Taxes. The said instruction dealt with the framing of an assessment which is substantially higher than the returned income. In the said instruction it was noted that one of the points that came up for consideration in the eighth meeting of the Informal Consultative Committee was that the

income assessments were arbitrarily pitched at high figures and that the collection of disputed demands as a result thereof was also not stayed in spite of the specific provision in the matter in Section 220(6) of the said Act. The observations of the then Dy. Prime Minister were noted. The observations were to the effect that where the income determined on assessment was substantially higher than the returned income, say, twice the latter amount or more, the collection of the tax in dispute should be held in abeyance till the decision on the appeals, provided there were no lapse on the part of the assessee. The Central Board of Direct Taxes, by virtue of the said Instruction No. 96, desired that the above observations of the then Dy. Prime Minister be brought to the notice of all the Income Tax Officers and that the powers of stay on recovery in such cases be exercised, upto the stage of first appeal, by the Inspecting Assistant Commissioner/Commissioner of Income-tax. Noting the above instruction, this Court observed as under:

> "41. A perusal of paragraph 2 of the aforesaid extract would show that where the income determined is substantially higher than the returned income, that is, twice the latter amount or more, then the collection of tax in dispute should be held in abeyance till the decision of the appeal is taken. In this case, as we have noted above, the assessment is almost 8 times the returned income. Clearly, the above extract from Instruction No. 96 dated 21st August, 1969 would be applicable to the facts of the case....
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> 43. Under the circumstances, we are of the view that the Assessee would, in normal course, be entitled to an absolute stay of the demand on the basis of the above Instruction."

7. Mr. Jolly, who appeared on behalf of the respondent, submits that Instruction No. 96 which formed the basis of the decision of this Court in Valvoline Cummins Ltd.'s case now stands superseded by Instruction No. 1914 of 1993 dated 2.12.1993. Mr. Jolly handed over a copy of the said instruction. The relevant portion of the said instruction reads as under:

A. *Responsibility*

(i) It shall be the responsibility of the Assessing Officers and the TRO to collect every demand that has been raised, except the following:

(a) Demand which has not fallen due;

(b) Demand which has been stayed by a Court or ITAT or Settlement Commission;

(c) Demand for which a proper proposal for write off has been submitted;

(d) *Demand stayed in accordance with paras B and C below:*

(ii) Where demand in respect of which a Recovery Certificate has been issued or a statement has been drawn, the primary responsibility for the collection of tax shall rest with the TRO.

(iii) It would be the responsibility of the supervisory authorities to ensure that the Assessing Officers and the TROs take all such measures, as are necessary to collect the demand. It must be understood that mere issue of a show cause notice with no follow up is not to be regarded as adequate effort to recover taxes.

B. *Stay petitions*

(i) Stay petitions filed with the Assessing Officers must be disposed of within two weeks of the filing

of petition by the taxpayer. The assessee must be intimated of the decision without delay.

(ii) Where stay petitions are made to the authorities higher than the Assessing Officer (DC/CIT/CC), it is the responsibility of the higher authorities to dispose of the petitions without any delay, and in any event within two weeks of the receipt of the petition. Such a decision should be communicated to the assessee and the Assessing Officer immediately.

(iii) The decision in the matter of stay of demand should normally be taken by Assessing Officer/TRO and his immediate superior. *A higher superior authority should interfere with the decision of the AO/TRO only in exceptional circumstances e.g., where the assessment order appears to be unreasonably high-pitched or where genuine hardship is likely to be caused to the assessee*. The higher authorities should discourage the assessee from filing review petitions before them as a matter of routine or in a frivolous manner to gain time for withholding payment of taxes.

C. *Guidelines for staying demand*

(i) A demand will be stayed only if there are valid reasons for doing so. Mere filing an appeal against the assessment order will not be a sufficient reason to stay the recovery of demand. A few illustrative situations where stay could be granted are:...

(emphasis supplied)

8. Relying upon the said Instruction No. 1914 of 1993, Mr. Jolly submitted that all previous instructions stood superseded which included the supersession of said Instruction No. 96. He further submitted that paragraph No. 2(C), which deals with guidelines for staying demand, specifically requires that a demand be stayed only if there are valid reasons for doing so and that a mere filing of

an appeal against the assessment order will not be a sufficient reason for staying recovery of a demand.

9. Having considered the arguments advanced by the learned Counsel for the parties, we are of the view that although Instruction No. 1914 of 1993 specifically states that it is in supersession of all earlier instructions, the position obtaining after the decision of this Court in Valvoline Cummins Ltd. (supra) is not altered at all. This is so because paragraph No. 2(A) which speaks of responsibility specifically indicates that it shall be the responsibility of the Assessing Officer and the TRO to collect every demand that has been raised "except the following", which includes "(d) demand stayed in accordance with the paras B and C below". Para B relates to stay petitions. As extracted above, Sub-clause (iii) of para B clearly indicates that a higher/superior authority could interfere with the decision of the Assessing Officer/TRO only in exceptional circumstances. The exceptional circumstances have been indicated as - "where the assessment order appears to be unreasonably high pitched or where genuine hardship is likely to be caused to the assessee". The very question as to what would constitute the assessment order as being reasonably high pitched in consideration under the said Instruction No. 96 and, there, it has been noted by way of illustration that assessment at twice the amount of the returned income would amount to being substantially higher or high pitched. In the case before this Court in Valvoline Cummins Ltd. (supra) the assessee's income was about eight (8) times the returned income. This Court was of the view that was high pitched. In the present case, the assessed income is approximately 74 times the returned income and obviously, this would fall within the expression "unreasonably high pitched".

(emphasis supplied)

The aforesaid issue is thus no more *res integra and* thus the impugned order is not sustainable. A figure of 8 times and 74 times has been classified as "unreasonably high pitched". In the present case it is 350 times and so falls under the same nomenclature.

Consequently, the operation of the impugned order is stayed till the disposal of the writ petition. The natural consequence would be that any attachment order issued in pursuance to the impugned order would not have any effect.

The views expressed, of course, are only prima facie in nature.

The application stands disposed of.

Dasti to learned counsel for the respondent.

SANJAY KISHAN KAUL, J.

FEBRUARY 24, 2009 SUDERSHAN KUMAR MISRA, J.
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