



% 14.07.2009

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Present: Mr. N. Venkatraman, Sr. Advocate with Mr. S. Nanda Kumar,  
and Mr. Achin Goel, Advs. for the petitioner.  
Ms. Rashmi Chopra, Adv. for the respondent.

+CM Appl. No. 8466/2009 (exemption)

Exemption is allowed, subject to just exceptions.

WP(C) No.10085/2009 and CM Appl. Nos. 8464, 8465/2009

Against the assessment orders in respect of Assessment Years 2002-03 and 2003-04, the matter went up to the Income Tax Appellate Tribunal, which decided the appeals in favour of the petitioner/assessee vide its judgment dated 23.09.2008. As per the petitioner, the effect of this order is that a sum of Rs.18,65,63,974/- and Rs.17,79,42,416/- have become refundable to the petitioner in respect of the said two assessment years.

The Assessing Officer has, in the meantime, passed the assessment orders dated 29.12.2008 under Section 143(3) of the Income Tax Act for the Assessment Year 2005-06. As per this assessment, tax demand is of Rs.23,65,62,608/- and interest demand thereon of Rs.11,39,93,998/- is raised. The Assessing Officer, in these circumstances, gave show cause notice to the petitioner as to why the aforesaid amount of tax payable in respect of Assessment Year 2005-06 be not adjusted from the amount,



which is to be refunded for the Assessment Years 2002-03 and 2003-04

thereafter has passed the orders dated 09.03.2009 confirming action proposed in the show cause notice. Against this order, the present writ petition is preferred by the petitioner.

Learned counsel for the petitioner makes following two submissions:

- a) The Assessing Officer while making assessment in respect of Assessment Year 2005-06 as gone by its earlier stand without even considering the orders dated 23.09.2008 passed by the learned ITAT in respect of Assessment Years 2002-03, 2003-04, and which has not been taken into consideration. Learned counsel states that such a demand could not have been raised and therefore, the petitioner has very strong case in appeal, which has already been filed by the petitioner against the Assessment order dated 29.12.2008. He further states that the petitioner also proposes to move stay application in the said appeal. According to the petitioner, there is every likelihood that stay may be



granted in favour of the petitioner having regard to

ITAT order.

- b) The amount, which is refundable to the petitioner, could not have been adjusted against the aforesaid demand in respect of Assessment Year 2005-06, more so by a non-speaking order which does not discuss the merits of the matter.

After hearing learned counsel for both the parties, we are of the opinion that it would be appropriate for the petitioner to file stay application and press the same in the proceedings before the CIT(A) insofar as demand for the Assessment Year 2005-06 is concerned. In case, however, the stay is not granted, naturally amount against the amount of tax in the said assessment year would be payable and in that eventually order dated 09.03.2009 for adjustment would not warrant any interference. On the other hand, if the CIT(A) or any higher authority grants stay against the demand made in respect of Assessment Years 2005-06, the amount refundable for Assessment Year 2002-03, 2003-04 shall be paid to the Assessee/petitioner by the Assessing Officer.



It goes without saying that while considering the applicatio  
stay, the CIT(A) shall take into consideration all the pleas of the petitioner  
including the plea predicated on the order passed by the ITAT. Before we  
part with, we make it clear that we have not expressed any view on the  
merits of the case.

The writ petition and CMs are disposed of in the aforesaid  
terms.

*Dasti.*

*A.K. SIKRI*  
A.K. SIKRI, J.

*Valmiki J. Mehta*  
VALMIKI J. MEHTA, J.

July 14, 2009  
pmc

*— e M-9152/09 20 Rectification*