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

% Judgment Delivered on: 08.10.2025

+ CONT.CAS(C) 506/2019

COURT ON ITS OWN MOTION .....Petitioner
Through:

Versus

ANURADHA MISRA .....Respondent
Through: Mr. Ruchir Bhatia, Sr. SC with respondent in person.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J

1. The present petition was registered pursuant to the direction given by this Court *vide* order dated 17.05.2019 passed in W.P. (C) 4238/2019.

2. The facts in brief giving rise to the present contempt petition are that, against the assessment orders for the Assessment Years 2011–12, 2013–14, 2014–15, 2015–16, and 2016–17, which raised a total demand of ₹8,09,20,130/-, the assessee, namely Dhruva Goel, preferred an appeal before the Commissioner of Income Tax (Appeals) [hereinafter **'CIT(A)'**] and filed an application seeking stay of the demand till the disposal of the said appeal, subject to payment of ₹50,00,000/-.

3. The respondent who was working as Principal Commissioner of Income Tax (Central-3), New Delhi rejected the said application for stay and directed the assessee to deposit 20% of entire demand in light of CBDT

circular vide O.M. No. 404/72/93- ITCC dated 29.02.2016 and its amendment dated 31.07.2017.

4. The said application of the assessee was disposed of by an order dated 11.03.2019 directing the assessee to pay 20% of the total demand, and observing that mere filing of appeal against assessment order cannot be considered as sufficient reason for stay of demand, and that the stay will operate on payment of 20% of the total demand. The relevant part of the order reads thus:

> *"2. An opportunity of being heard on the above matter has been provided by the undersigned on 13.02.2019. On 13.02.2019, Sh. Praveen Jain, CA attended and he was directed to pay the 20% of demand within one week, failing which coercive action will be taken and stay petition was rejected. However, till date you have deposited only 10% of outstanding demand. Hence, you are directed to pay 20% of total demand (balance 10%) in the case immediately, as mere filing of appeal against the assessment order cannot be considered as sufficient reason for stay of demand."*

5. Against the said order, the assessee filed a petition bearing no. W.P (C) 2830/2019. The Hon'ble Division Bench of this Court *vide* order dated 29.03.2019 allowed the writ petition opining that the respondent has not furnished any reasons indicating why the exercise of discretion cannot be in favour of the assessee for imposing a condition of less than 20% of the demand.

6. Accordingly, the impugned order dated 11.03.2019 was set aside and the respondent was directed to pass fresh orders in accordance with law, within a period of two weeks from the date of the said order. The operative directions of the Division Bench in the order dated 29.03.2019 reads thus:

"This Court is of the opinion that the PCIT has not furnished any reasons indicating why the exercise of discretion cannot be in favour of assessee for imposition of condition of less than 20% of demand. Accordingly the impugned order is set aside. The Commissioner is hereby directed to pass fresh orders in accordance with law having regard to the facts and circumstances within two weeks from today. Till that date, the respondents are directed not to initiated or complete any coercive action."

7. Pursuant to the above direction, the respondent passed an order dated 05.04.2019, the relevant excerpts of which read thus:

"4. An opportunity of being heard on the above matter has been provided by the undersigned on 13.02.2019. On 13.02.2019, Sh. Praveen Jain, CA attended and he was directed to pay the 20% of demand within one week, failing which coercive action will be taken. The stay petition was thus rejected. However, till date the assessee has deposited only 10% of outstanding demand. ***Since the assessee has preferred appeal before CIT(A), as per CBDT Circular vide O.M. No. 404/72/93-ITCC dated 29.02.2016 and its amendment dated 31.07.2017, the assessee should pay at least 20% of the entire demand and after submission of challan, the application for stay of demand can be considered. Hence, the assessee is directed to pay 20% of total demand (balance 10%) in the case immediately, as mere filing of appeal against the assessment order cannot be considered as sufficient reason for stay of demand. The A.Y 2011-12 to 2016-17, it is evident that the financial condition of assessee is sound and payment of above demand will not cause any financial hardship to the assessee.***

5. I have carefully considered the arguments made by the assessee and I am not convinced. Even if the assessment is High Pitched, the assessee is being asked to pay only 20% of the demand, moreover ***the assessee has not given any evidence regarding his weak financial position****.*

6. Keeping in view the facts stated above, the assessee's request for stay of recovery of demand till disposal of its first appeal is

hereby rejected."

(emphasis supplied)

8. The aforesaid order dated 05.04.2019 passed by the respondent was again challenged by the assessee by filing a writ petition [W.P. (C) 4238/2019]. The Hon'ble Division Bench of this Court vide order dated 24.04.2019 observed that the order passed on 05.04.2019 is a mere reiteration of the earlier order dated 11.03.2019 which had been set aside by the Court, without furnishing any reason in terms of the Court's order dated 29.03.2019. Accordingly, the Court formed a *prima facie* opinion that the respondent is actually in contempt of the Court's order dated 29.03.2019.

9. Consequently, notice was issued to the respondent calling upon her to state as to why contempt proceedings not be drawn upon her for wilful disobedience of the Court's order dated 29.03.2019. The relevant excerpts of the order dated 24.09.2019 reads thus:

> *"4. This is a mere reiteration of the order dated 11.03.2019 which had been set aside by this court, without furnishing any reasons in terms of the court's order. Prima facie, the Court is of the opinion that the Principal Commissioner is actually in contempt of this Court's order.*
>
> *5. Issue notice to Ms. Anuradha Mishra, Principal Commissioner of Income Tax (Central-3), New Delhi, returnable on 17th May, 2019. Ms. Anuradha Mishra should be present in Court on the next date of hearing and state why contempt proceedings be not drawn upon her for wilfully disobeying this Court's order."*

10. Subsequently, *vide* order dated 17.05.2019, the Court directed that the proceedings be registered as a separate contempt petition and numbered as such. Further, the respondent was also permitted to file an affidavit

explaining as to why she should not be proceeded for disobeying the order dated 29.03.2019 passed by the Hon'ble Division Bench of this Court in W.P (C) 2830/2019.

11. In deference to the above directions, the present contempt petition was registered, as noted in the opening part of this judgment.

12. Mr. Ruchir Bhatia, learned Sr. Standing Counsel for the respondent submits that pursuant to the said direction in order dated 17.05.2019, the respondent had filed an affidavit on or about 29.07.2019. He submits that in the said affidavit, the petitioner has given justification that there is no wilful disobedience of the order of this Court.

13. He further contends that without prejudice to the said justification, the petitioner has also stated that if any displeasure has been caused to this Court on account of any omission/action on part of the answering respondent, she tenders an unconditional apology with a prayer that the present contempt proceedings may be dropped and not proceed with.

14. He further contends that the respondent, who at the relevant time was working as Principal Commissioner of Income Tax (Retd.), subsequently retired on 31.05.2021. He submits that the respondent, during her service and even after her retirement, had been appearing on each date before this Court, but the present contempt petition could not be taken up for consideration after the respondent had filed her affidavit in terms of order dated 17.05.2019.

15. Mr. Bhatia submits that the order dated 05.04.2019 passed by the respondent contained reason, though not too elaborate. Expanding on his submission, he submits that the opinion formed by the respondent that assessee should pay at least 20% of the entire demand is based on CBDT

circular being OM No.404/72/93-IPCC dated 29.02.2016 and its amendment dated 31.07.2017.

16. He submits that the said circular clearly stipulates that the assessing officer shall normally grant stay of demand till the disposal of first appeal on payment of 20% of the disputed demand, and the respondent had passed order on similar lines.

17. He further contends that besides predicating the decision on aforesaid circular, the respondent had considered sound financial condition of the assessee based on returns of Assessment Years 2011-12 to 2016-17. It is only after recording the finding that the assessee has not given any evidence regarding his weak financial position, respondent had rejected the request of assessee for stay of recovery of demand, as the assessee had paid only 10% of the demand, and he had failed to pay at least 20% of the entire demand.

18. In support of his submission, Mr. Bhatia relied upon the decision of Hon'ble Division Bench of this Court in ***Skyline Engineering Contracts (India) Pvt. Ltd. v. Deputy Commissioner of Income Tax, (2021) 132 taxmann.com 158 (Delhi).***

19. In addition, Mr. Bhatia has also drawn attention of the Court to affidavit dated 29.07.2019 filed by the respondent pursuant to the order of this Court dated 17.05.2019, particularly to paras 8 to 19.

20. Mr. Bhatia has also relied upon the decision of Hon'ble Supreme Court in ***S.S. Roy v. State of Orissa & Anr., (1954) 2 SCC 9***, to contend that illegal exercise of jurisdiction and error of judgment, without any proper care and caution, but without any improper motive, cannot be regarded as contempt.

21. I have heard Mr. Ruchir Bhatia, learned counsel for the respondent

and have perused the record.

22. For deciding whether the respondent is guilty of civil contempt, apt would it be to refer to Section 2(b) of the Contempt of Courts Act, 1971, which reads thus:

> *"2(b) 'Civil Contempt' means willful disobedience of any judgment, decree, direction, order, writ or other process of a Court or willful breach of an undertaking given to a Court."*

23. As evident, there are four conditions in Section 2(b) for holding a person guilty for committing civil contempt i.e. (i) there must be a judgment, decree, direction, order, writ or other process of a Court; (ii) there must be disobedience of such judgment, decree, direction, order, writ or other process of a Court; (iii) such disobedience must be wilful, or (iv) there is a wilful breach of an undertaking where such an undertaking is given to the Court.

24. Thus, an important statutory ingredient of contempt of a civil nature is that the disobedience to the order alleging contempt has to satisfy the test that it is a willful disobedience.

25. The Hon'ble Supreme Court in ***Ashok Paper Kamgar Union v. Dharam Godha & Ors, (2003) 11 SCC 1*** had observed that the expression 'willful disobedience' in the context of Section 2(b) of the Contempt of Courts Act, 1971 would mean an act or omission, which is done voluntarily and intentionally and with the specific intent to do something which the law forbids or with the specific intent to fail to do something that the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or purpose but the act or omission has to be judged having

regard to the facts and circumstances of each case.

26. In ***Dinesh Kumar Gupta v. United India Insurance Co. Ltd. & Ors., (2010) 12 SCC 770***, in the context of civil contempt, the Hon'ble Supreme Court observed that the position reflected in a catena of decisions is that contempt of a civil nature can be held to have been made out only if there has been a willful disobedience of the order and even though there may be disobedience, yet if the same does not reflect that it has been a conscious and wilful disobedience, a case for contempt cannot be held to have been made out. The Court also made following pertinent observations which are relevant in the context of present case:

> *"**23. Besides this, it would also not be correct to overlook or ignore an important statutory ingredient of contempt of a civil nature given out under Section 2(b) of the Contempt of Courts Act, 1971 that the disobedience to the order alleging contempt has to satisfy the test that it is a wilful disobedience to the order**. Bearing this important factor in mind, it is relevant to note that a proceeding for civil contempt would not lie if the order alleged to have been disobeyed itself provides scope for reasonable or rational interpretation of an order or circumstance which is the factual position in the instant matter. It would equally not be correct to infer that a party although acting due to misapprehension of the correct legal position and in good faith without any motive to defeat or defy the order of the Court, should be viewed as a serious ground so as to give rise to a contempt proceeding.*
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> *24. To reinforce the aforesaid legal position further, it would be relevant and appropriate to take into consideration the settled legal position as reflected in the judgment and order delivered in Ahmed Ali v. Supdt., District Jail [1987 Cri LJ 1845 (Gau)] as also in B.K. Kar v. High Court of Orissa [AIR 1961 SC 1367 : (1961) 2 Cri LJ 438]* ***that mere unintentional disobedience is not enough to hold anyone guilty of contempt and although disobedience might have been established, absence of wilful***

disobedience on the part of the contemnor, will not hold him guilty unless the contempt involves a degree of fault or misconduct. Thus, accidental or unintentional disobedience is not sufficient to justify for holding one guilty of contempt. It is further relevant to bear in mind the settled law on the law of contempt that casual or accidental or unintentional acts of disobedience under the circumstances which negate any suggestion of contumacy, would amount to a contempt in theory only and does not render the contemnor liable to punishment and this was the view expressed also in State of Bihar v. Rani Sonabati Kumari [AIR 1954 Pat 513] and N. Baksi v. O.K. Ghosh [AIR 1957 Pat 528] *."*

(emphasis supplied)

27. Reference at this stage, may also be had to the decision of Hon'ble Supreme Court in ***S.S. Roy*** (supra), wherein the First Class Magistrate of Cuttack was found to be guilty of contempt of Court of High Court of Orissa, who had made the order under Section 144 Cr.PC for which the High Court found that no circumstances existed that would justify the Magistrate in passing the order of that nature under Section 144 Cr.PC.

27.1. In this backdrop, the Hon'ble Supreme Court relying upon the decision of Privy Council in ***Barton v. Field***[1] observed that it is not sufficient in such cases for the purpose of visiting a judicial officer with penal consequences of proceeding in contempt, simply because he committed an error of judgment or the order passed by him is in excess of authority vested in him.

27.2. It was emphasized that the error must be a willful error proceeding from improper or corrupt motives in order that he may be punished for contempt of Court.

[1] (1843) 4 Moo PCC 273 : 13 ER 307

28. Now coming back to facts of the present case, it is to be noted that the earlier order dated 11.03.2019 passed by the respondent was set aside by Hon'ble Division Bench of this Court in W.P.(C) 2830/2019 on the ground that the respondent had not furnished any reasons indicating as to why the exercise of discretion cannot be done in favour of the assessee for imposition of condition of less than 20% of demand, and a direction was given to the respondent to pass a fresh order in accordance with law.

29. Sequel to above, the respondent passed a fresh order dated 05.04.2019, however, the assessee impugned the said order as well, by filing another writ petition being W.P.(C) 4238/2019.

30. In the said petition, the Hon'ble Division Bench observed that the order passed by respondent on 05.04.2019 is a mere reiteration of the earlier order dated 11.03.2019 which had been set aside. The Court also formed a *prima facie* opinion that the respondent is actually in contempt of Court's order dated 29.03.2019, as no reason had been given by the respondent in her said order dated 05.04.2019.

31. After having closely examined the order dated 05.04.2019, this Court finds that respondent's decision to insist upon the assessee to pay at least 20% of the entire demand as a pre-condition to grant of stay, is predicated on three reasons *viz*., - (i) as per CBDT circular *vide* OM no.404/72/93-IPCC dated 29.02.2016 and its amendment dated 31.07.2017, the assessee should pay at least 20% of the entire demand and after submission of challan, an application for stay of demand can be considered; (ii) from the returns of Assessment Years 2011-12 to 2016-17, it is evident that the financial condition of assessee is sound and the payment of 20% demand will not cause any financial hardship to the assessee; and (iii) the assessee

has not given any evidence regarding his weak financial position.

32. To appreciate the first reason, relevant would it be to advert to OM dated 29.02.2016, as amended by OM dated 25.08.2017, that were relied upon by the respondent in her aforesaid order dated 05.04.2019. The relevant excerpts of the said two OMs, are reproduced hereinbelow:

OM dated 29.02.2016

"4. In order to streamline the process of grant of stay and standardize the quantum of lump sum payment required to be made by the assessee as a pre-condition for stay of demand disputed before CIT (A), the following modified guidelines are being issued in partial modification of Instruction No. 1914:

(A) In a case where the outstanding demand is disputed before CIT (A), the assessing officer shall grant stay of demand till disposal of first appeal on payment of 15% of the disputed demand, unless the case falls in the category discussed in para (B) hereunder.

(B) In a situation where,

(a) the assessing officer is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount higher than 15% is warranted (e.g. in a case where addition on the same issue has been confirmed by appellate authorities in earlier years or the decision of the Supreme Court or jurisdictional High Court is in favour of Revenue or addition is based on credible evidence collected in a search or survey operation, etc.) or,

(b) the assessing officer is of the view that the nature of addition resulting in the disputed demand is such that payment of a lump sum amount lower than 15% is warranted (e.g. in a case where addition on the same issue has been deleted by appellate authorities in earlier years or the decision of the Supreme Court or jurisdictional High Court is in favour of the assessee, etc.), - the assessing officer shall refer the matter to the administrative Pr. CIT/ CIT, who after considering all relevant facts shall decide the quantum/ proportion of demand to be paid by the assessee as lump sum payment for granting a stay of the balance demand."

OM dated 25.08.2017

Vide Board's O.M of even number dated 31.7.2017, modifications were made to O.M. NO.404/72/93-ITCC dated 29-2-2016, to the effect that the standard rate prescribed in O.M. dated 29-2-2016 stood revised to 20% of the disputed demand, where the demand was contested before CIT (A).
It is hereby clarified that the modifications laid down in Board's O.M. dated 31-7-2017 are prospective in nature and (natters already decided as per Board's O.M. of even number dated 29-2-2016 before the issue of O.M. dated 31-7-2017 shall not be reviewed merely on the grounds of a the modifications laid down in the said O.M. dated 31-7-2017."

33. A conjoint reading of OM dated 29.02.2016 and OM dated 25.08.2017 clearly brings out that where the demand was contested before CIT (A), as in the present case, normally grant of stay of demand till disposal of first appeal shall be subject to payment of 20% of the disputed demand. It is only in the event that payment of a lump-sum amount higher than 20% is warranted, that the reasons are required to be given.

34. Reference in this regard may be had to the following observations made by Hon'ble Division Bench of this Court in ***Skyline Engineering Contracts*** (supra) while dealing with the question of deposit of 20% in terms of OM dated 29.02.2016, as amended by OM dated 25.08.2017:

"9. Having heard learned counsel for the parties, this Court is of the view that the Government is bound to follow the rules and standards they themselves had set on pain of their action being invalidated. [See: Amarjit Singh Ahluwalia Vs. State of Punjab & Ors.; 1975 (3) SCR 82 and Ramana Dayaram Shetty vs. International Airport Authority of India & Ors. 1979 SCR (3) 1014].

10. ***This Court is also of the view that the office memorandum dated 29th February, 2016 read with office memorandum dated 25th***

August, 2017 stipulate that the Assessing Officer shall normally grant stay of demand till disposal of the first appeal on payment of 20% of the disputed demand. In the event, the Assessing Officer is of the view that the payment of a lump sum amount higher than 20% is warranted, then the Assessing Officer will have to give reasons to show that the case falls in para 4(B) of the office memorandum dated 29th February, 2016.

11. This Court finds that in the present matters no order has been passed by the Assessing Officer under Section 245 of the Act for adjustments of refunds. Moreover, there is no order by the Assessing Officer giving any special/particular reason as to why any amount in excess of 20% of the outstanding demand should be recovered from the petitioner-assessee at this stage in accordance with paragraph 4(B) of the office memorandum dated 29th February, 2016.

12. Consequently, this Court is of the view that the respondents are entitled to seek pre-deposit of only 20% of the disputed demand during the pendency of the appeals in accordance with paragraph 4(A) of the office memorandum dated 29th February, 2016, as amended by the office memorandum dated 25th August, 2017.

13. Accordingly, the respondent no.1 is directed to refund the amount adjusted in excess of 20% of the disputed demand for the Assessment Years 2015-16 and 2016-2017 within four weeks."

(emphasis supplied)

35. Besides relying upon CBDT circulars viz. OM dated 29.02.2016 and OM dated 25.08.2017, the respondent also took into consideration the financial condition of the assessee, as was borne out from the returns of Assessment Years 2011-12 to 2016-17, to record that the financial condition of assessee is sound and payment of 20% of the entire demand will not cause any financial hardship to the assessee.

36. That apart, the respondent also stated that the assessee has not given any evidence regarding his weak financial position warranting direction to pay less than 20% demand.

37. Thus, this Court finds that the decision taken by the respondent *vide* its order dated 05.04.2019 is not bereft of reasons, *albeit*, such reasons are brief and not elaborate. The order does reflect due application of mind on the part of respondent.

38. In the facts and circumstances of the present case, this Court does not find that there is any wilful disobedience of the order dated 05.04.2019, or that the order has been passed by the respondent with evil intent or with a bad motive or purpose, especially when the order has been passed in the light of CBDT circular, i.e., OM dated 29.02.2016, as amended by OM dated 25.08.2017.

39. In light of the aforesaid discussion, this Court is of the view that no case is made out to proceed with the contempt petition and the contempt proceedings are, accordingly, dropped.

40. The petition is disposed of, in the aforesaid terms.

VIKAS MAHAJAN, J

OCTOBER 8, 2025/aj