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 Article 226 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 Section 143(1) 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 Section 245 of the 1961 Act for the assessment year of 2022-23. The petitioner has prayed for immediate release of an amount of

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 Section 244A of the 1961 Act.

FACTS OF THE CASE:

2. The relevant facts of the case are as follows:-

a. The petitioner is a partnership firm. On October 15, 2018 it had filed its return of income (hereafter "return") for the assessment year 2018-19 thereby declaring a total income of Rs.1,16,24,230/- (Rupees One Crore Sixteen Lakh Twenty Four Thousand Two Hundred and Thirty) only.

b. The petitioner's case was selected for scrutiny assessment and ultimately an order dated September 11, 2021 was passed under Section 143(3) read with Section 144B of the 1961 Act thereby assessing the total income of the petitioner at Rs.6,60,76,120/-. The said assessment was also followed by a notice of demand of even date.

c. The petitioner assailed such assessment in appeal before the appellate authority on September 22, 2021 under Section 246A of the 1961 Act. Such appeal is pending.

d. On March 15, 2022 the petitioner filed its return for the assessment year 2021-22 declaring a total income of Rs.4,85,23,350/- and claimed a refund of Rs.7,59,274/. The return was processed and a refund of Rs.7,58,210/- was determined on October 25, 2022. On the same date i.e. October 25, 2022 itself, an intimation under Section 245 of the 1961 Act was issued to

the petitioner thereby informing it that the entire refund of Rs.7,58,210/- stood adjusted against demands for the assessment year 2009-2010 and 2018-19.

e. On December 31, 2022 the petitioner filed its return for the assessment year 2022-23 declaring a total income of Rs.2,54,61,800/- and claiming a refund of Rs.1,56,22,708. The said return was processed and by intimation dated September 27, 2023 issued under Section 143(1) of the 1961 Act, refund of Rs. 1,64,03,820/- was determined.

f. On November 10, 2023 the petitioner received another notice under Section 245 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

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:-

a. In terms of the Instruction No.1914 dated February 02, 1993 partially modified by the Office Memorandum being F. No. 404/72/93-ITCC dated February 29, 2016 revised by the Office Memorandum being F. No. 404/72/93-ITCC dated July 31, 2017 and further revised by Office Memorandum being F. No. 404/72/93-ITCC dated August 25, 2017 the respondent Revenue Authorities cannot recover any sum in excess of 20% of the disputed demand upon an appeal being preferred by the assessee against the assessment order that gives rise to the disputed demand.

b. Attention was invited to paragraph 3 of the Office Memorandum being F. No. 404/72/93-ITCC dated February 29, 2016 to submit that the instruction was necessitated in view of hardships faced by the assessee upon the Revenue's insistence to *pay high proportion of disputed demand*. It was submitted that in terms of the said Memorandum (which was subsequently revised as aforesaid), if the Assessing Officer was of the view that the case

required payment in excess of 20% of the disputed demand, it was incumbent on him to refer it to the administrative Pr. CIT/CIT who would then decide the quantum of payment to be made for staying the recovery of the balance sum.

c. Once an appeal is preferred against the assessment order and the demand is thus disputed, any adjustment beyond 20% of the disputed demand would be without jurisdiction, if the same falls foul of the provisions of the aforesaid two Office Memorandums dated February 29, 2016 and July 31, 2017.

d. A meaningful reading of the various provisions of Section 220(6) of the 1961 Act, would show that an Assessing Officer could treat an assessee in default only in cases where the assessee has not paid the demand without assailing the assessment order in appeal and not when appeal had been preferred.

e. A judgment of the Hon'ble Division Bench of Rajasthan High Court in the case of ***Rajendra Kumar vs. Assistant Commissioner of Income-Tax & Another***[1] was relied on to contend that if an appeal is filed against an assessment order in the prescribed format within the prescribed time an assessee will not be deemed to be an assessee in default. It was asserted that in that case, upon finding that there was violation of the provisions of Section 245 of the 1961 Act and that the appeal filed by the assessee had remained pending for long, the Court had allowed the writ petition and directed refund of the adjusted amounts with costs.

[1] [2022] 445 ITR 622 (Raj)

f. For the purpose of adjusting any sum from amounts refundable to an assessee, the procedure prescribed under Section 245 of the 1961 Act must be followed. Adjustment of demand under Section 245 of the 1961 Act must be preceded by an intimation and disposal of the objection raised by the assessee.

g. In support of the aforesaid contention, CBDT's Instruction No.12/2013 [F.No.312/55/2013-OT] dated September 09, 2013 was cited and it was submitted that the Revenue had accepted the decision of the Hon'ble High Court at Delhi in a *suo motu* case being ***Court On Its Own Motion vs. Union of India***[2] whereby the Revenue had been directed to not only afford an opportunity to the assessee to file response to the intimation under Section 245 of the 1961 Act but also to examine the reply given by the assessee and communicate the same to the Central Processing Centre, Bengaluru (hereafter "CPC").

h. A Co-ordinate Bench judgment of this Court in the case of ***Graphite India Limited vs. Deputy Commissioner of Income-Tax & Others***[3], was relied on for the proposition that the Revenue is not entitled to adjust sums in excess of 20% of the disputed demand from amounts refundable to the assessee without disposing of the objection of the petitioner against the intimation under Section 245 of the 1961 Act.

[2] W.P.(C) 2659/2012, decided on March 14, 2013
[3] [2022] 448 ITR 292 (Cal)

i. Two unreported decisions of the Co-ordinate Benches of this Court in the case of ***Danieli India Limited vs. The Assistant Commissioner of Income Tax Central Certificate 2(2), Kolkata***[4] and ***Gaurav Enterprises vs. Union of India & Others***[5] were also cited for the same proposition.

j. A decision of the Hon'ble Supreme Court in the case of ***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. 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 Section 220(6) and Section 245 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

unduly treated as an assessee in default by the Assessing Officer by exercising discretion wrongly.

m. A judgment of the Hon'ble Supreme Court in the case of ***Sultana Begum vs. Prem Chand Jain***[8] was cited in support of proposition that Courts must avoid a clash between two provisions of a statute so that one section of the statute does not defeat the other provision and in case of conflict between two provisions the Court should harmonize the two provisions.

n. He invited the attention of the Court to the intimation dated October 25, 2022 under Section 245 of the 1961 Act and indicated that while the same granted 30 days' time to the petitioner to respond the said intimation, failing which adjustment would be done, the Revenue adjusted the refund in respect of assessment year 2021-2022 against the disputed demand for the assessment year 2018-19 on the same day i.e. October 25, 2022 itself. He demonstrated from the intimation dated November 10, 2023 that although the intimation indicated that the petitioner had 21 days to take steps against the said intimation, yet the refund in respect of assessment year 2022-23 was adjusted against the disputed demand for the assessment year 2018-19 on the very next day i.e. on November 11, 2023.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

4. Mr. Jaiswal, learned Advocate appearing for the Revenue made the following submissions (both orally as well as through written notes):-

[8] (1997)1 SCC 373

a. A combined reading of sub-sections (1), (2), (3) and (4) of Section 220 of the 1961 Act, would show that specified in the notice of demand under Section 156 of the 1961 Act is not paid by an assessee within the time limit specified in sub-section (1) or extended in sub-section (3) of Section 220 of the 1961 Act then such assessee shall be deemed to be in default under sub-section (4) of Section 220 of the 1961 Act. The judgment of the Hon'ble Supreme Court in the case of ***Mohan Wahi vs. Commissioner of Income-Tax***[9] was cited in support of the proposition.

b. A judgment of the Hon'ble Division Bench of the Hon'ble High Court of Madhya Pradesh in ***Northern Coal Fields Limited vs. Assistant Commissioner of Income-Tax & Others***[10] was cited to contend that the Revenue was well within its authority to adjust refunds against outstanding demands even beyond 20% of the disputed demand and that the mandate of Section 245 of the 1961 Act stood complied with upon intimation being given to the assessee.

c. The judgment of the Hon'ble Madhya Pradesh High Court in the case of ***Northern Coal Fields Limited*** (supra) was assailed in SLP[11] before the Hon'ble Supreme Court but the same was not interfered with by a reasoned order observing that after adjustment, any balance refund shall be returned to the assessee.

[9] [2001] 16 Taxman 63 (SC)
[10] [2017] 398 ITR 508 (MP)
[11] Northern Coal Fields Limited vs. Assistant Commissioner of Income-Tax & Others, SLP Appeal (C) No. 18140 of 2017

d. A judgment of the Hon'ble Delhi High Court in the case of ***Chemester Food Industry Private Limited vs. Central Processing Centre***[12] was cited to argue that in absence of conditions for grant of stay, the outstanding demand remains enforceable in law and may validly be recovered by way of adjustment of refund due to the assessee.

e. The petitioner failed to exercise due diligence at every material stage of the proceedings inasmuch as the petitioner neither discharged the outstanding demand nor sought any stay of recovery in accordance with law. The petitioner failed to respond to the statutory notices issued by the Revenue.

f. Despite repeated notices issued by the appellate authority, the petitioner failed to respond within reasonable time and filed its written submissions only after one year and seven months from the date of issuance of the said notice. It was submitted that notices were issued to the petitioner on March 13, 2024, September 07, 2024 and October 03, 2024 thereby calling upon the petitioner to file its written submissions but the petitioner merely sought adjournments and ultimately filed written submissions only on November 10, 2025.

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)

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 Section 143(1) of the 1961 Act and submitted that the said intimation contained a note that the refund determined in the intimation along with interest under Section 244A of the 1961 Act was subject to adjustment of outstanding demand(s), if any, under Section 245 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 Section 143(1) of the 1961 Act.

i. Reliance was also placed on a judgment of this Court in the case of ***Gouri Shankar Awasthi vs. Income-Tax Officer***[13] to assert that mere filing of an appeal does not amount to stay.

j. It was submitted that as the petitioner did not file any response to the Revenue's notices under Section 245 of the 1961 Act therefore the Revenue proceeded to adjust the refund against the outstanding demand pertaining to assessment year 2018-19 on November 13, 2023.

k. The writ petition suffers from gross delay and laches. The cause of action as regards adjustment of refund under Section 245 of the 1961 Act arose on October 25, 2022 and thereafter on November 11, 2023. The petitioner remained completely silent for all these years and approached the Court only on October 27, 2025 after an unexplained delay of more than three years

[13](1970) 78 ITR 784

from the accrual of cause action at the first instance and nearly two years from the subsequent adjustment. Such inordinate and unexplained delay disentitles the petitioner to any relief under Article 226 of the Constitution of India.

PETITIONER'S REJOINDER SUBMISSIONS:

5. Mr. Majumdar learned Senior Advocate appearing for the petitioner rejoined by submitting as follows:-

a. While the intimation dated November 10, 2023 under Section 245 of the 1961 Act granted 21 days' time for response by the petitioner, the respondent no.2 adjusted the entire refund on the very next day thereby preventing the petitioner from raising any objection to the proposed adjustment at all.

b. Since the adjustments, in excess of 20% of the disputed demand, were done much prior to the issuance of notices calling upon the petitioner to file written submissions in the appeal, therefore, the delay in filing written submissions by the petitioner cannot be cited to justify such adjustments.

c. The Revenue's defence on the petitioner's failure to respond to the outstanding demand in the manner prescribed by the User Manual does not take away the petitioner's right to respond to the intimation under Section 245 of the 1961 Act and in the case at hand such right has evidently been trampled.

d. The Court was taken through the provisions of Section 220 and 245 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 Article 226 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.

9. In the case of ***State of Madhya Pradesh & Another vs. Bhailal Bhai & Others***[14], the Hon'ble Supreme Court established a guiding framework for assessing delays in approaching the High Court under Article 226 of the Constitution of India in the following words:-

> *"**21.** .....It appears to us the maximum period fixed by the legislature as the time within which the relief by a suit in a Civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. The court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more*

[14] AIR 1964 SC 1006 : 1964 SCC OnLine SC 10

than this period, it will almost always be proper for the court to hold that it is unreasonable."

10. In ***Ramchandra Shankar, Deodhar & Others vs. State of Maharashtra & Others***[15] which was an Article 32 case before the Hon'ble Supreme Court and then in ***M/s. Dehri Rohtas Light Railway Company Limited vs. District Board, Bhojpur & Others***[16], (which had emanated from a writ petition under Article 226 of the Constitution of India) it was elucidated that *the rule which says Court may not inquire into belated and stale claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay, the Court must necessarily refuse to entertain the petition.* In the case of ***Karnataka Power Corpn. Ltd. & Another vs. K. Thangappan & Another***[17], the Hon'ble Supreme Court while referring to several celebrated authorities of the Hon'ble Supreme Court which approved the *dictum* of Sir Barnes Peacock in the Privy Council judgment in the case of ***Lindsay Petroleum Co. vs. Prosper Armstrong Hurd***[18] instructed as follows:-

*"**6.** Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prashad v. Chief Controller of Imports and*

[15] (1974) 1 SCC 317
[16] (1992) 2 SCC 598
[17] (2006) 4 SCC 322
[18] (1874) 5 PC 221

Exports [(1969) 1 SCC 185 : AIR 1970 SC 769] . Of course, the discretion has to be exercised judicially and reasonably.

7. *What was stated in this regard by Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong Hurd [(1874) 5 PC 221: 22 WR 492] (PC at p. 239) was approved by this Court in Moon Mills Ltd. v. M.R. Meher [AIR 1967 SC 1450] and Maharashtra SRTC v. Shri Balwant Regular Motor Service [(1969) 1 SCR 808 : AIR 1969 SC 329] . Sir Barnes had stated:*

"Now, the doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy."

11. In the case at hand the petitioner seeks issuance of a writ of mandamus commanding the Revenue to release/refund with interest the amounts adjusted in excess of 20% of the disputed demand pertaining to assessment year 2018-19 from the sums refundable to the petitioner in respect of assessment years 2021-22 and assessment year 2022-23. Such adjustments had been done upon intimations dated October 25, 2022 and November 10, 2023 being issued under Section 245 of the 1961 Act.

12. It can be easily noticed that the first of the two adjustments by which the petitioner is aggrieved was done more than three years prior to the institution

of the writ petition. To be precise, the adjustment from sums refundable to the assessee in respect of assessment year 2021-22 was done on October 25, 2022 upon issuing intimation under Section 245 of the 1961 Act on the same date, but the writ petition has been filed only on October 27, 2025 i.e. three years thereafter. There is no explanation at all, in the writ petition for the belated approach to this Court. The claim for refund is in the nature of a money claim, a suit wherefor would have been barred by limitation after three years. In such view of the matter, having regard to the law laid down by the Hon'ble Supreme Court in the case of ***Bhailal Bhai*** (supra), this Court is not inclined to exercise its discretion and entertain any challenge to the said adjustment in this proceeding. 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 Section 245 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

would, in any case be subject to the pending appeal, therefore this Court is disinclined to dismiss the writ petition at the threshold. Furthermore, since the writ petition has been filed seeking refund of the amounts adjusted under Section 245 of the 1961 Act during pendency of the appeal, therefore, mere passage of time would not create any indefeasible right in the Revenue to retain such amount, in case it is found that the Revenue was not entitled to adjust the said amount or that the Revenue has adjusted the said amount *de hors* law. In such view of the matter it cannot be said that entertainment of the writ petition would cause prejudice to the Revenue.

14. The main issue which falls for consideration of this Court in the case at hand is whether the Revenue was justified in adjusting any sum in excess of 20% of the disputed demand once an was appeal had been preferred by the assessee against the assessment order dated September 11, 2021.

15. Section 220 of the 1961 Act provides for the situations when tax becomes payable and when an assessee is deemed to be in default. The following provisions of the said section are relevant for the present purpose:-

> ***"220. When tax payable and when assessee deemed in default:***
>
> *(1) Any amount, otherwise than by way of advance tax, specified as payable in a notice of demand under Section 156 shall be paid within thirty days of the service of the notice at the place and to the person mentioned in the notice:*
>
> ***Provided** that, where the Assessing Officer has any reason to believe that it will be detrimental to revenue if the full period of thirty days aforesaid is allowed, he may, with the previous approval of the Joint Commissioner, direct that the sum specified in the notice of demand shall be paid within such period being a period less than the period of thirty days aforesaid, as may be specified by him in the notice of demand.*

(1-A) Where any notice of demand has been served upon an assessee and any appeal or other proceeding, as the case may be, is filed or initiated in respect of the amount specified in the said notice of demand, then, such demand shall be deemed to be valid till the disposal of the appeal by the last appellate authority or disposal of the proceedings, as the case may be, and any such notice of demand shall have the effect as specified in Section 3 of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964 (11 of 1964).]

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(3) Without prejudice to the provisions contained in sub-section (2), on an application made by the assessee before the expiry of the due date under sub-section (1), the Assessing Officer may extend the time for payment or allow payment by instalments, subject to such conditions as he may think fit to impose in the circumstances of the case.

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(6) Where an assessee has presented an appeal under Section 246 or Section 246-A the Assessing Officer may, in his discretion, and subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee as not being in default in respect of the amount in dispute in the appeal, even though the time for payment has expired, as long as such appeal remains undisposed of."

16. Thus Section 220(1) of the 1961 Act specifies the time limit for payment of the amount demanded by a notice of demand under Section 156 of the 1961 Act. Section 220(3) thereof vests authority in the Assessing Officer to extend the said time or allow payment through installments *on an application made by the assessee before the expiry of the due date under sub-section (1)* of Section 220 of the 1961 Act.

17. Section 220(1A) of the 1961 Act is significant as it provides that once a notice of demand is served upon the assessee it remains valid till the disposal of any appeal or other proceedings that may have been initiated by the assessee in respect of the demand.

18. Section 220(6) of the 1961 Act vests discretionary authority in the Assessing Officer to *treat the assessee as not being in default in respect of the amount in dispute in appeal even though the time for payment has expired as long as such appeal remains undisposed of*. Notably, in contrast to the provisions of Sub-Section (3) of Section 220 of the 1961 Act does not provide for filing of any application, which is indicative that discretion can be exercised by the Assessing Officer even *suo motu.* In such context the following observations of a Co-ordinate Bench of this Court in the case of ***Golam Momen vs. Deputy Commissioner of Income-Tax & Others***[19] may be noticed:-

> *"**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.*
>
> ***10.** When such discretion is invoked, the authority has to exercise this discretion guided by certain considerations. The consideration which may form guidance for exercising the discretion may be summarised thus: (1) Whether there is a prima facie case in favour of the assessee; (2) the amount to tax and penalty involved in the appeal; (3) the capacity of the assessee of pay the amount; (4) undue hardship to the assessee; and (5) nature of security offered by the assessee. While considering the above aspects, the authority must have also in mind the adverse effect that may ensue on the public revenue in case stay is granted, though, it may not be the primary concern. In Siemens Engi-*

[19] (2002) 256 ITR 754 : 2002 SCC OnLine Cal 844

neering and Mfg. Co. of India Ltd. v. Union of India, (1976) 2 SCC 981 : [1976] AIR 1976 SC 1785; Travancore Rayons Ltd. v. Union of India, (1969) 3 SCC 868 : [1971] AIR 1971 SC 862; Associated Tubewells Ltd. v. R.B. Gujarmal Modi, [1957]AIR 1957 SC 742, it was held that the order should ex facie disclose the reason for decline or grant of stay and that such exercise of discretion is a quasi-judicial function and, therefore, it has to be exercised fairly and reasonably and not arbitrarily or capriciously.

11. *Since the power is quasi-judicial in nature, it implies that an opportunity is to be given to the assessee when it seeks to invoke such discretion. The opportunity of hearing is implicit in the provision. Support may be drawn from the decisions cited above. In Mool Chand Mahesh Chand v. CIT, [1978] 115 ITR 1 (All) and Mrs. N. Savithri Sam v. ITO, [1969] 72 ITR 730 (Mad), it was held that such exercise of discretion is a quasi-judicial function."*

[Emphasis supplied]

19. If no application for stay is filed and/or no stay is granted, in such cases irrespective of pendency of the appeal, the Revenue would be justified in proceeding with recovery of the amount specified in the notice of demand. Such recovery must, however, be made only in accordance with the provisions of the 1961 Act. While the specific provisions for recovery have been enumerated in Chapter XVII of the 1961 Act, yet the provisions of Section 245 of the 1961 Act have also been recognised as those pertaining to recovery[20].

20. The expression, *"after giving an intimation in writing to such person of the action proposed to be taken under this sub-section"* employed in Sub-Section (1) of Section 245 of the 1961 Act makes it explicit that the intimation must be prior to the adjustment and axiomatically the adjustment mentioned in the intimation would then only be in contemplation (i.e. there would be no adjustment done at that time). What could be the object of issuance of such

[20] Maruti Suzuki India Ltd. vs. Deputy Commissioner of Income-Tax, (2012) 347 ITR 43; Rajendra Kumar (supra)

prior intimation? Could it be mere informing the assessee that amounts refundable to it are being adjusted against outstanding demands? There is broad judicial consensus on the point that the intimation is given for the purpose of affording an opportunity to the assessee to register its objection to such adjustment and it is not a formality aimed at merely informing the assessee about the contemplated adjustment[21]. Indeed, if keeping the assessee informed had been the only purpose, the same could be done post adjustment as well.

21. In fact the legal position could not have been otherwise. Section 245 of the 1961 Act vests discretionary authority in the Revenue to adjust any sum refundable to the assessee against any outstanding demand. Exercise of such authority would visit the assessee with civil consequences. That being so it must be exercised in a fair and reasonable manner compatible with the principles of natural justice. It is well settled that any act or order involving civil consequences must be preceded by observance of principles of natural justice and that even if a statute is silent as regards the same such principles can be read into it, unless the same are excluded by necessary implication. (See ***S.L. Kapoor vs. Jagmohan & Others[22]***)

22. There is nothing in Section 245 of the 1961 Act that indicates exclusion of principles of natural justice by necessary implication. Thus, in order to be just,

[21] Glaxo Smith Kline Asia (P) Ltd. vs. CIT, (2007) 290 ITR 35; Hindustan Unilever Ltd. vs. CIT, (2015) 377 ITR 281; S. Narayanan vs. CIT, (2017) 395 ITR 271; Avana Global FZCO vs. CIT, 2024 SCC OnLine Bom 6086; Graphite India (supra)

[22] (1980) 4 SCC 379

fair and reasonable in adjusting refunds of an assessee, it would be imperative for the Revenue to issue notice/intimation to the assessee, examine the objections raised by the assessee and then decide as to whether adjustment should be made or not. Such obligation of the Revenue also finds mention in the CBDT's Instruction No.12/2013 [F.No.312/55/2013-OT] dated September 09, 2013 which was issued pursuant to the directions passed by the Hon'ble Delhi High Court in the *suo motu* case referred to hereinabove.

23. While examining and dealing with such objection, the Assessing Officer would do well to keep in mind the width of discretion vested in him by Section 220(6) of the 1961 Act. This is clearly the essence of the judgment of the Hon'ble Rajasthan High Court as well, in the case of ***Rajendra Kumar*** (supra).

24. In the present case it has been noticed that no application under Section 220(6) 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 Section 245 of the 1961 Act as discussed earlier.

25. It is evident from records that prior intimation under Section 245 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

constitutes a clear breach of the authority to adjust in terms of the aforementioned provision.

26. Once an intimation/notice under Section 245 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 Section 220(6) of the 1961 Act to treat the petitioner as not in default. Such right, therefore, could not have been abruptly foreclosed by the Revenue.

27. There is ample weight of authorities on the point that while exercising discretion under Section 220(6) of the 1961 Act, the Assessing Officer is required to act fairly, reasonably and judiciously keeping in mind the guidelines mentioned in the Instruction dated February 02, 1993 and the Office Memorandum dated February 29, 2016, July 31, 2017 and August 25, 2017.

28. In ***Graphite India Limited*** (supra) a Co-ordinate Bench of this Court directed refund of the amount adjusted in excess of 20% of the disputed demand upon finding that an appeal against the assessment order wherefrom the demand had arisen was pending and that neither the order under Section 245 of the Act nor the order of stay of demand under Section 220(6) of the 1961 Act cited any special/particular reason as to why any sum in excess of 20% of the disputed demand was required to be adjusted.

29. In ***Danieli India Limited*** (supra) the Court found that in the facts of the said case, the Assessing Officer could not have adjusted more than 20% of the disputed demand when the appeals against the assessment orders were pending.

30. In ***Gaurav Enterprises*** (supra), the Court has followed ***Graphite India Limited*** (supra) and ***Danieli India Limited*** (supra) and directed refund of the amounts adjusted in excess of 20% of the disputed demand in a situation where an appeal that had been filed against the relevant assessment order within the statutory time-frame was pending since long and even the application for stay that had filed before the relevant Assessing Officer within a few months of the filing of appeal had been kept pending.

31. In ***M/s. Andrew Telecommunications India Private Limited*** (supra) the Hon'ble Bombay High Court granted stay of the demand upon deposit of 15% of the disputed demand in terms of the then operating office memorandum upon setting aside the order of rejection of stay passed by the Assessing Officer.

32. Apart from the purpose of buttressing the argument that failure of the Revenue to complete the drill of Section 245 of the 1961 Act was fatal to the adjustment of refund, the judgment in the case of ***Rajendra Kumar*** (supra) was cited by the petitioner for contending that on filing of appeal within time an assessee cannot be treated to be in default. ***Rajendra Kumar*** (supra) has observed that:-

"Nowhere in the provisions of Section 220(6) of the Income Tax Act, it is specified that the stay application has to be filed. The mandate of Section 220(6) of the Income Tax Act

makes it very clear that once an appeal is filed within the time in the prescribed format, the assessee will not be deemed as an "assessee-in-default."

33. While it is true that Section 220(6) of the 1961 Act does not provide filing of an application, but at the same time it has been held by this Court in ***Golam Momen*** (supra) that relevant information required for exercising discretion to treat the assessee as not in default can be brought to the notice of the Assessing Officer by the assessee only and it is upto the assessee to make an application to invoke the discretion of the Assessing Officer. The Court further held that *the scope of making an application is implicit in the section.*

34. If an assessee has neither filed any application for stay nor filed any objection to the intimation under Section 245 of the 1961 Act then upon expiry of the time specified in the intimation, there would/could be no impediment on the part of the Assessing Officer in adjusting the full amount because there is no deemed stay of the demand merely on filing of appeal. Law on such score is fairly well settled that mere filing of appeal would not amount to stay. 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 Section 220(6) 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

discretion for. Therefore, this Court respectfully disagrees with the observations made in ***Rajendra Kumar*** (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 Section 245 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 Section 220(6) of the 1961 Act can be exercised *suo motu* as well. Furthermore, in any case it is settled law that discretion must be exercised judiciously, fairly and reasonably. In this connection the observations made by this Court in the case of ***Aluminium Corporation of India Limited vs. C. Balakrishnan & Others***[23], while examining a substantially similar provision of the Wealth Tax Act, 1957 whereby the Wealth Tax Officer had been vested with discretion not to treat an assessee in default during pendency of appeal, deserve notice. In the said case, the Court followed the *dictum* of the Hon'ble Division Bench of this Court in the case of ***Kashiram Agarwalla vs. Collector of 24-Parganas***

[23] AIR 1959 Cal 114

& Others[24]. The relevant observations of this Court in the case of ***Aluminium Corporation of India Ltd.*** (supra) are extracted hereinbelow:-

> *"In my opinion, the law has been rightly laid down by Das Gupta,]., and there can be no doubt that the matter is one of discretion to be exercised judicially. A judicial exercise of discretion involves a consideration of the facts and circumstances of the case in all its aspects The difficulties Involved in the issues raised in the case and the prospects of the appeal being successful is one such aspect. The position and economic circumstances of the assessee is another. If the officer feels that the stay would put the realisation of the amount in jeopardy that would be a cogent factor to be taken into considerations. The amount involved is also a relevant factor. If it is a heavy amount, it should be presumed that immediate payment, pending an appeal in which there may be a reasonable chance of success, would constitute a hardship. The Wealth Tax Act has just come into operation. If any point is involved which requires an authoritative decision, that is to say, a precedent, that is a point in favour of granting a stay. Quick realisation of tax may be an administrative expediency, but by itself it constitutes no ground for refusing a stay. While determining such an application, the authority exercising discretion should not act in the role of a mere tax-gatherer."*
>
> [Emphasis supplied]

36. The following observations of the Hon'ble Gujarat High Court in the case of ***Sun Pharmaceutical Industries Limited vs. Deputy Commissioner of Income-Tax & Another***[25] are also pertinent in the present context:-

> *"**21.** So far as section 245 of the Act is concerned, there need not be any debate as regards the power of the Department to adjust the refund, however, such power should be exercised in a reasonable manner. Here is a case wherein the assessee is sought to be deprived of a huge amount towards the refund. A huge amount towards refund is being declined on the ground that a demand is pending for the previous year. If such unbridled power is assumed by the Revenue to adjust the refund, it would result in a situation where two assessees against whom equal demands are raised will be treated differently. One assessee who has to recover significant amount towards the refunds and another*

[24] (1958) 33 ITR 800

[25] (2021) 438 ITR 357 : 2021 SCC OnLine Guj 3070 : (2021) 322 CTR 787

who has not to recover the refunds would be put in two different categories because in the first case refund would be adjusted whereas in the second case, no such adjustment is possible."

37. ***Sultana Begum*** (supra) is an authority *inter alia* for the proposition that a statute should be read as a whole and its provisions should be read harmoniously in order to avoid conflict between them.

38. The Revenue had urged that the petitioner ought to have responded to or ought to have objected against the outstanding demand in the manner indicated in the User Manual upon receipt of the intimation under Section 143(1) of the 1961 Act and by not doing so the petitioner has in effect lost its right to object to the intimation under Section 245 of the 1961 Act. This Court is unable to agree to such contention. The adjustments that are made under Section 143(1) of the 1961 Act are quite different form the adjustments made under Section 245 of the 1961 Act. The two provisions operate in two distinct fields, serve different legislative purposes and operate in separate stages of the assessment and recovery process. Not responding to an outstanding demand indicated in an intimation under Section 143(1) of the said Act would not even minimally weaken an assessee's right to object to an intimation under Section 245 of the 1961 Act.

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 Section 245 of the 1961 Act was issued to the petitioner

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. Indeed if the petitioner had been instrumental in delaying the appeal after being granted stay, that might have been a good ground to recall or appropriately review or modify an order of stay, in accordance with law.

41. The judgment in the case of ***Mohan Wahi*** (supra) is an authority for the proposition that for the purpose of treating an assessee in default, a notice of demand must be served upon the assessee. If after service of notice the

assessee does not pay the sum demanded in terms of the provisions of Section 220 of the 1961 Act, then recovery proceedings can be launched. In the said case, the sale conducted in recovery proceedings was set aside by the Hon'ble Supreme Court upon finding that the assessee was not in default as notice of demand had not been served upon the assessee. The said judgment is of no avail for the Revenue in the facts of the present case.

42. ***Northern Coal Fields Limited*** (supra) was rendered in an absolutely different fact situation where a conditional stay for a limited period had been granted by the Assessing Officer under Section 220(6) of the 1961 Act and adjustments were made upon expiry of the period of stay. The observation made in the said judgment that mere service of intimation under Section 245 of the 1961 Act would serve the purpose does not appear to be in consonance with the settled position that has been discussed hereinabove and has also been accepted by the Revenue in CBDT's Instruction No.12/2013 [F.No.312/55/2013-OT] dated September 09, 2013 pursuant to the directions of the Hon'ble Delhi High Court in the *suo motu* case. This Court in the case of ***Graphite India Limited*** (supra) has negated a similar contention of the Revenue, after taking note of several decisions cited on this point, in the following words:-

> *"**9.** Mr. Dutta, learned advocate appearing for the respondents opposing this writ petition submits that under section 245 of the Act there is no provision for granting of hearing before taking action of adjustment and it is not mandatory. He also submits that the whole issue relating to the assessment year 2015-16 can be resolved in the pending appeal before the Commissioner of Income-tax (Appeals) including the impugned action under section 245 of the Act. I am not convinced with the argument and submission of Mr. Dutta in view of admitted facts as recorded above and the law laid down in the aforesaid*

judgments cited by the petitioner that affording of opportunity of hearing to the assessee-petitioner before making any adjustment under section 245 of the Act is mandatory and just intimation of proposal to adjustment is a mere idle formality. More so when the petitioner has already filed an objection against the intimation proposing adjustment of refund from the due of another assessment year, the respondent-Assessing Officer was bound to dispose of the same and to take a decision on the said objection. Mr. Dutta could not satisfy this court from any record that any formal order was passed by the Assessing Officer on the objection to the aforesaid intimation under section 245 of the Act and specifically recording his satisfaction that the demand of tax in question cannot be recovered at all and has come to a specific conclusion that the petitioner is not in a position to pay the amount of demand in question. Mr. Dutta also could not satisfy from the record that any specific order was passed on the application of the petitioner under section 220(6) of the Act either rejecting or accepting the same before taking such coercive action under section 245 of the Act and more so in adjusting the amount more than 20 per cent. of the demand in question by disregarding and ignoring the aforesaid office memorandum of the Central Board of Direct Taxes which was binding upon him is bad in law."

[Emphasis supplied]

43. In such view of the matter, the said judgment cannot aid the Revenue at all.

44. The order of the Hon'ble Supreme Court in the case of ***Northern Coal Fields Limited*** (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 ***Northern Coal Fields Limited*** (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.

46. In ***Gouri Sankar Awasthi*** (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 Section 245 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. It is clarified that for the purpose of calculating the amount adjusted in excess of 20% of the disputed demand for the assessment year 2018-19, the amounts adjusted by the intimation dated October 25, 2022 shall not be taken into consideration. This clarification is being issued since the adjustment made on October 25, 2022 has not been interfered with on the ground of delay as already indicated hereinabove. Further, since the petitioner has approached this Court after about two years from the date of adjustment on November 11, 2023 therefore, the petitioner is not entitled to any interest on the amounts

that may be determined by the Revenue to have been adjusted in excess of 20% of the disputed demand as indicated hereinabove.

48. The relevant Commissioner (Appeals) is also requested to dispose of the appeal filed by the petitioner expeditiously and positively within a period of two months from date. It is further clarified that the direction for refund made hereinabove, shall be subject to the ultimate decision taken in the pending appeal.

49. WPO 780 of 2025 stands disposed of with the above observations. No costs.

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.)