

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

FRIDAY, THE TWENTY SECOND DAY OF APRIL
TWO THOUSAND AND TWENTY TWO

PRESENT

**THE HON'BLE SRI JUSTICE UJJAL BHUYAN
AND
THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

WRIT PETITION NO: 13926 OF 2022

Between:

APR JEWELLERS PRIVATE LIMITED, (Pan No AALCA3233D) Rep. By Its Managing Director Sri Rama Krishna Reddy Ambati, Office at H.No.3-6-290, Flat No.3, Ground Floor, Sai Tirumala Towers, Opp. Hotel Central Park, Hyderguda, Hyderabad -500029.

...PETITIONER

AND

1. The Commissioner of Income Tax (Appeals), Hyderabad-I.
2. The Income Tax Officer, Ward 1(2), Income Tax Department, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to pass an order or orders or a writ more particularly one in the nature of Writ of Mandamus and declare the action of the Respondent No. 1 in disposing of the Stay Petition dt. 05/04/2021 filed by the Writ Petitioner against the Assessment Order No. ITB A/AST/S/143 (3)/2019- 20/1022824094 dt. 21-12-2019 for the A.Y.2017-18 of the Respondent No. 2 vide orders dt. 04.03.2022 by directing the petitioner herein to deposit a sum equivalent to 20% of the outstanding demand of Rs. 1,48,02,044/- so as to avoid the petitioner being treated as not being default of the above said demand as illegal, arbitrary and against the Principles of Natural Justice and in violation of Article 14 and contrary to the relevant instructions issued by CBDT and contrary to the guidelines issued by the judgements of the Hon'ble High courts and consequently set aside the order dt. 04.03.2022 vide Appeal No CIT(A), Hyderabad-1/10430/2019-20 passed by Respondent No. 2

IA NO: 1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay of all further recovery proceedings of the Respondent No.2 till the disposal of the present petition

**Counsel for the Petitioner: SRI SRIRIPURAM KESHA, COUNSEL FOR
SRI CHALLA GUNARANJAN**

**Counsel for Respondents: SRI K. RAJI REDDY
Sr. SC FOR INCOME TAX DEPARTMENT**

The Court made the following: ORDER

THE HONOURABLE SRI JUSTICE UJJAL BHUYAN
AND
THE HONOURABLE MRS JUSTICE SUREPALLI NANDA

WRIT PETITION No.13926 of 2022

ORDER: *(Per Hon'ble Sri Justice Ujjal Bhuyan)*

Heard Mr.Siripuram Keshava, learned counsel appearing on behalf of Mr. Challa Gunaranjan, learned counsel for the petitioner and Mr. K.Raji Reddy, learned Standing Counsel for Income Tax Department for the respondents.

2. Petitioner is aggrieved by order dated 04.03.2022 passed by the 1st respondent to the effect that petitioner would not be treated as being in default if the petitioner deposits 20% of the outstanding demand on or before 20.03.2022.

3. It may be mentioned that petitioner is an assessee under the Income Tax Act, 1961 (briefly referred

to hereinafter as 'the Act') assessed to tax within the jurisdiction of respondent No.2.

4. For the assessment year 2017-18, respondent No.2 passed assessment order dated 21.12.2019 under Section 143(3) of the Act making certain additions under Section 69A of the Act. Against the returned income of the petitioner of Rs.1,78,860.00, by the aforesaid assessment order, income of the petitioner was assessed at Rs.1,50,03,952.00.

5. Against the aforesaid order of assessment, petitioner has preferred appeal before the 1st respondent. It is stated that the appeal is pending.

6. In the meanwhile, 2nd respondent issued demand notices, which were followed by garnishee notices. Though petitioner had filed a stay petition before the 1st respondent on 05.04.2021, the same was not considered while the petitioner faced demand with garnishee notices.

7. It was at that stage that petitioner had approached this Court by filing W.P.No.31826 of 2021. The said writ petition was disposed of on 03.12.2021 as under:

“6. After hearing learned counsel for the parties and on due consideration, we are of the view that it would meet the ends of justice if a direction is issued to the Appellate Authority i.e., respondent No.1 to take up the stay petition of the petitioner dated 05.04.2021 and pass appropriate orders thereon in accordance with law. We are of the further opinion that the said stay petition should be decided within a period of six weeks from the date of receipt of a copy of this order. Till such time, the demand pursuant to assessment order dated 21.12.2019 shall remain stayed.”

8. Thereafter, 1st respondent passed a long order dated 04.03.2022 granting conditional stay. Relevant portion of the order dated 04.03.2022 reads as under:

“10.1 The assessee appellant will be treated as not being in default in respect of the amount of demand of Rs.1,48,02,444 outstanding at present, (after payment of

amount as indicated below), subject to the following conditions being fulfilled.

1. The appellant deposits a sum equivalent to 20% of the above outstanding demand of Rs.1,48,02,444 on or before 20.03.2022 and submits evidence of such payment of demand to the Assessing Officer.
2. The appellant must cooperate in the early disposal of its appeal and make its necessary submissions in compliance of notice(s) issued in this regard.

The above conditions having been fulfilled :

1. The appeal on merits in the case of the appellant will be taken up, out of turn for early disposal for which notice for hearing is being issued separately.
2. No coercive measures will be taken for recovery of reminder of outstanding demand against the appellant if the appellant complies with Sr.No.1 above.
3. This order will be reviewed after expiry of 3 months from the date of order, or if the appeal order is not passed by such time period.
4. This order will not impinge on the right of the Assessing officer to adjust refunds arising, if any against the demand.
5. This order is without prejudice to the proceedings and final outcome the appeal to be decided on the grounds of appeal filed by the appellant."

9. On a perusal of the impugned order dated 04.03.2022, it is seen that 1st respondent was guided by the office memorandum dated 31.07.2017 of the Central Board of Direct Taxes (CBDT), as per which stay may be granted in cases where appeals are pending subject to payment of 20% of the disputed demand. Thus, following the CBDT office memorandum dated 31.07.2017, the impugned order came to be passed.

10. Supreme Court in **Principal Commissioner of Income Tax vs. L.G. Electronics India Private Ltd.**¹, observed that an administrative circular would not operate as a factor on the Commissioner since it is a quasi-judicial authority. Clarifying further, Supreme Court held that it would be open to the authority on the facts of individual cases to grant deposit orders of a lesser amount than 20% pending appeal.

¹ (2018) 18 Supreme Court Cases 447

11. Needless to say, 1st respondent as the appellate authority exercises quasi-judicial powers. Power to consider prayer for stay is incidental and ancillary to the power to hear appeals. As a quasi-judicial authority, Commissioner (Appeals) is not bound by the administrative circulars issued by CBDT. He has to apply his own independent mind in the facts and circumstances of each case.

12. Considering the above, the impugned order dated 04.03.2022 is hereby set aside. The matter is remanded back to the 1st respondent for a fresh decision on the prayer for stay of the petitioner in accordance with law after complying with the principles of natural justice. This shall be done within a period of four (04) weeks from the date of receipt of a copy of this order. Till such time, demand pursuant to the assessment order dated 21.12.2019 shall remain stayed.

13. This disposes of the Writ Petition. However, there shall be no order as to costs.

14. As a sequel, miscellaneous applications pending, if any, in this Writ Petition, shall stand closed.

//TRUE COPY//

SD/-T.SRINIVAS
ASSISTANT REGISTRAR
SECTION OFFICER

One Fair Copy to THE HON'BLE SRI JUSTICE UJJAL BHUYAN
(For His Lordship's Kind Perusal)

One Fair Copy to THE HON'BLE MRS JUSTICE SUREPALLI NANDA
(For Her Lordship's Kind Perusal)

To,

1. The Commissioner of Income Tax (Appeals), Hyderabad-I.
2. The Income Tax Officer, Ward 1(2), Income Tax Department, Hyderabad.
3. 11 L.R. Copies.
4. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
5. The Secretary, Telangana Advocates Association Library, High Court Buildings, Hyderabad.
6. One CC to Sri Challa Gunaranjan Advocate [OPUC]
7. One CC to Sri K. Raji Reddy, Sr. SC for Income Tax Department (OPUC)
8. Two CD Copies
9. One Spare Copy

MBC
SB

HIGH COURT

DATED: 22/04/2022



ORDER

WP.No.13926 of 2022

DISPOSING OF THE WRIT PETITION

WITHOUT COSTS

22/04/2022
[Signature]
02/05/2022