

Delhi High Court

M/S Expeditors International Of ... vs Assistant Commissioner Of Income ... on 29 July, 2022

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P. (C) 11032/2022 & C.M.No.32314/2022

M/S EXPEDITORS INTERNATIONAL OF WASHNGTNGT, INC.

Through: Mr.Deepak Chopra with
Khare, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE
INTERNATIONAL TAX 1(2)(2), DELHI AND ANR.

..... Re
Through: Mr.Sunil Kumar Agarwal,
Sr.Standing Counsel with Mr.
Gupta and Mr.Uthkarsh Tiwari
Advocates.

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Date of Decision: 29th July, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, J (Oral):

1. Present writ petition has been filed challenging the Order dated 14th July, 2022 passed under Section 254 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') in SA No. 180/Del/2022 in ITA No. 1464/Del/2022, whereby the Petitioner has been directed to pay an amount of Rs.5 crores against the outstanding demand for the Assessment Year 2018-19.

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2. Learned counsel for the Petitioner states that the challenge is primarily on the ground that said order has been passed arbitrarily as the payment has been directed against additions which stand covered in favour of the Petitioner by a series of decisions rendered by the Tribunal in the Petitioner's own case in previous seven assessment years.

3. Issue notice. Mr.Sunil Kumar Agarwal, learned Senior Standing Counsel, accepts notice on behalf of the Respondents. He states that for grant of stay, not just the *prima facie* case but balance of convenience and irreparable loss/injury have also to be made out. In support of his submission, he relies upon the judgment of the Supreme Court in *Assistant Collector of Central Excise, Chandan Nagar, West Bengal vs. Dunlop India Ltd. & Ors.*, (1985) 1 SCC 260.

4. In the present case, the fact that the additions stand covered in favour of the Petitioner by a series of decisions rendered by the Tribunal for the last seven assessment years is not in dispute.

5. This Court finds that the Central Board of Direct Taxes (CBDT) has itself issued Instruction No.1914 dated 02nd February, 1993 giving guidelines for Stay of Demand. One of the Guidelines for grant of complete stay is "if the demand in dispute relates to issues that have been decided in assessee's favour by an appellate authority or court earlier....."

6. Further the impugned Order is in the teeth of the decisions of this Court which have categorically held that recovery of demand against issues which have been decided in favour of Assessee is wholly unwarranted.

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7. Consequently, keeping in view the Guidelines/Instruction issued by the CBDT subsequent to the judgment of the Supreme Court in Dunlop India Ltd.(supra), the condition of deposit of Rs.5 crore imposed by the Tribunal vide impugned order dated 14th July, 2022 is set aside and the matter is directed to be heard by the Tribunal as expeditiously as possible. With the aforesaid direction, the present writ petition along with pending application stands disposed of.

MANMOHAN, J MANMEET PRITAM SINGH ARORA, J JULY 29, 2022 KA Signature Not Verified
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