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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 13th October, 2026***

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CNR No. DLHC010840842024

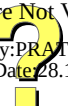
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W.P.(C) 16193/2024 & CM APPLs. 52209/2026, CM APPL. 52210/2026**MOHAN CLOTHING CO PVT LTD****.....Petitioner****Through: Ms.Ananya Kapoor, Mr.Sumit Lalchandani, Mr.Tanmay Doneria, Adv.****versus****DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 16(1) DELHI & ANR.****.....Respondents****Through: Mr.Gaurav Gupta, SSC, Mr.Shivendra Singh, Mr.Yojit Pareek, JSCs, Mr.Surya Jindal, Advocate.****CORAM:****HON'BLE MR. JUSTICE DINESH MEHTA****HON'BLE DR. JUSTICE ADITI CHOUDHARY****J U D G M E N T****DINESH MEHTA, J. (ORAL)**

1. Instant petition has been preferred for the following reliefs:

“A. Issue a writ in the nature of Mandamus directing the Respondents to issue refund of Rs. 4,70,12,866/- along with up-to-date interest after adjusting the 20% of the total demand, amounting to Rs. 1,50,84,414/-, against the total demand of Rs. 7,57,22,070/- for AY 2020-21 as the action of the Respondents is unjust, arbitrary and against the provision of the Income Tax Act, 1961;

B. Directions to dispose off the appeal filed by the Petitioner





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before the CIT(A)/NFAC for AY 2020-21 in a time-bound manner.”

2. Ms.Ananya Kapoor, learned counsel for the petitioner submitted that immediately after the Assessing Officer had passed the Assessment Order on 29.09.2022 and raised a demand of Rs.7,54,22,070/- for the Assessment Year 2020-21, the petitioner had filed an appeal before the Commissioner of Income Tax (Appeals) (*hereinafter referred to as ‘CIT(A)’*) on 26.10.2022 and before the appeal could be decided, the Assessing Officer started taking coercive action for recovery of the demand.
3. She submitted that when the refund for Assessment Year 2022-23 became payable, the AO issued an intimation dated 17.01.2023 under Section 245 of the Income Tax Act, 1961 (for brevity, ‘Act of 1961’) and sought adjustment of petitioner’s refund of Rs.6,20,97,280/- against the above referred demand for the Assessment Year 2020-21.
4. She raised a grievance that without giving any opportunity to the petitioner to respond to the aforesaid notice, the adjustment of Rs.6,20,97,280/- was made which was way exceeding 20% of the total due demand against the petitioner. She argued that the recovery beyond the limit prescribed by the CBDT in Memorandum F.No. 404/72/93-ITCC dated 29.02.2016 read with Memorandum dated 31.07.2017 was illegal.
5. Learned counsel submitted that the petitioner thereafter preferred the instant writ petition wherein a Coordinate Bench of this Court *vide* order dated 22.11.2024 directed the National Faceless Appeal Centre (NFAC) to decide the appeal expeditiously.
6. She raised a grievance that in spite of direction so issued, the



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Appellate Authority has not decided the appeal and in the meantime, the Assessing Officer issued another notice dated 07.01.2025 to the petitioner seeking to adjust a sum of Rs.1,93,15,522/- against the remaining/outstanding demand qua which the petitioner filed a detailed reply/ representation dated 22.01.2025 and submitted that the Assessing Officer had already recovered more than 20% of the outstanding demand and in view of Memorandum F.No. 404/72/93-ITCC dated 29.02.2016 read with Memorandum dated 31.07.2017 issued by CBDT till the disposal of the assessee's appeal, which was pending before the CIT (Appeal), recovery of the remaining demand over and above 20% should have been stayed.

7. She further submitted that despite knowing that petitioner's appeal was pending, the Assessing Officer had adjusted the amount refundable (Rs.1,93,15,522/-) to the petitioner, which makes the total recovered amount to be about 110% of the total demand.

8. Learned counsel argued that the petitioner is entitled for refund of the amount over and above 20% of the total demand, as has been directed by this Court in a number of cases.

9. Mr.Gaurav Gupta, learned Senior Standing Counsel for the respondents submitted that the facts are not as simple as have been portrayed by the petitioner. He submitted that it is true that the petitioner has filed the appeal on 26.10.2022 but it had not filed any stay application along with the appeal neither before the Assessing Officer nor before the CIT (appeals) and therefore, the Memorandum F.No. 404/72/93-ITCC dated 29.02.2016 read with Memorandum dated 31.07.2017 issued by the CBDT do not apply.

10. It was argued that the Assessing Officer had passed an order under



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Section 220(4) of the Act of 1961 holding the petitioner deemed to be in default and thereafter he had adjusted the amount from the refund payable to the petitioner by way of a separate order under Section 245 of the Act of 1961. He argued that once the petitioner had been held to be in default, the petitioner's reply/ representation dated 22.01.2025 was of no avail inasmuch as the assessee, who had been once held in default, cannot be held to be "not in default" until the entire demand is paid.

11. He further contended that since amount has been recovered, no relief be granted and at the best, direction be issued to the Appellate Authority to decide petitioner's appeal at an early date.

12. Heard learned counsel for the parties.

13. Undisputedly until 30.01.2024, the petitioner had filed stay application neither before the Assessing Officer nor before the Appellate Authority and by the time the stay application was filed (on 17.01.2023), more than 80% of the amount (Rs. 6,20,97,280/-) had already been recovered from the petitioner. The petitioner has admittedly approached this Court after said amount (Rs. 6,20,97,280/-) stood recovered.

14. In our opinion, direction to refund such amount as prayed by the petitioner in the facts of the present case cannot be granted, since the petitioner did not even pray for a stay before any of the Competent Authority. As such neither the Memorandum issued by the CBDT apply nor can the respondents' action be faulted with.

15. So far as the petitioner's contention that on 17.01.2023, the amount had been recovered or refund has been adjusted without providing opportunity of hearing is concerned, the same may be termed as an arbitrary



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action of the Assessing Officer but in our opinion, the amount cannot be ordered to be refunded in the facts of the case, more particularly when more than 3 years have passed.

16. So far as the recovery of Rs.1,93,15,522/- is concerned, we have a different view. For that, we are of the considered opinion that said recovery was a colourable exercise of power to say the least. It is to be noted that the matter was pending before this Court and petitioner's stay application was pending consideration. That apart, pursuant to the notice issued on 07.01.2025 by the Assessing Officer, the petitioner had filed a reply/representation dated 22.01.2025 and pointed out that more than 80% of the amount had already been recovered and a request was made to keep the recovery in abeyance, but the Assessing Officer paid no heed to the petitioner's genuine request which was supported by CBDT circular and law.

17. When the remaining amount (Rs.1,93,15,522/-) was recovered on 18.02.2025 and the notice dated 07.01.2025 was issued, petitioner's stay application before the CIT (appeals) so also before this Court was pending and more than 80% of the demand amount has already been recovered. 'The circulars issued by CBDT are binding upon the Assessing Officer', is not something which this Court is supposed to reiterate. Simply because the petitioner had been declared to be an assessee in default, does not mean that he has committed a sin so as to be deprived of the benefit of CBDT circular. That apart, prior to adjusting the refund, an intimation under Section 245 of the Act of 1961 was necessary which we do not find on record.

18. Writ petition is, therefore partly allowed and Assessing Officer is



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directed to refund the amount of Rs.1,93,15,522/- recovered on 18.02.2025, within a period of 30 days from today with applicable interest in accordance with law.

19. Though it is a case, warranting imposition of cost upon the Assessing Officer who has proceeded arbitrarily and illegally, but since more than 18 months have passed, the officer who had passed the order must have by now changed. We, however, direct the Principal Chief Commissioner of Income Tax, Delhi to send a copy of this order to the officer who had effected the impugned recovery for information. He may also consider to keep a copy of this order to be placed in the service book of said officer for consideration of his Reporting Authority.

20. Needless to observe that direction of this Court given on 22.11.2024 and subsequently on 07.08.2026 to decide the appeal expeditiously shall continue to bind the Commissioner of Income Tax(Appeals)/National Faceless Appeal Centre. We request that the appeal be preferably decided within six months from the date of placing the certified copy of this order.

21. Interlocutory applications also stand disposed of.

**DINESH MEHTA
(JUDGE)**

**ADITI CHOUDHARY
(JUDGE)**

OCTOBER 13, 2026/Arya