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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 2830/2019 & CM Nos.13179-81/2019

DHRUVA GOEL

..... Petitioner

versus

PR. CIT, CENTRAL & ANR.

..... Respondents

+ W.P.(C) 2831/2019 & CM Nos.13182-84/2019

URMILA GOYAL

..... Petitioner

versus

PR. COMMISSIONER OF INCOME

TAX, CENTRAL & ANR.

..... Respondents

Present : Mr. Rohit Tiwari and Mr. Shobhit Tiwari, Advs. for the petitioner.

Mr. Sanjay Kumar and Mr. Asheesh Jain, Advs. for the respondents.

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HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

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O R D E R
29.03.2019

Issue notice to the respondents.

Mr. Sanjay Kumar, Advocate accepts notice on behalf of the respondents.

The petitioners' grievance is with respect to the denial by the respondent (Principal Commissioner) to grant relief of suspension of demand. The relief granted was to the extent which the Principal Commissioner perceived was within her domain i.e. imposing the condition that upon deposit of 20% of the demand, the rest of the amount would not be recovered. In this regard, the Revenue's view appears to have been guided by the prevailing circulars. In *Principal Commissioner of Income Tax v. L.G. Electronics* (C.A.No.6850/2018 decided on 20.07.2018), the Supreme Court observed as follows :

"Having heard Shri Vikramjit Banerjee, learned ASG appearing on behalf of the appellant, and given credence to the fact that he has argued before us that the administrative Circular will not operate as a fetter on the Commissioner since it is a quasi judicial authority, we only need to clarify that in all cases like the present, it will be open to the authorities, on the facts of individual cases, to grant deposit orders of a lesser amount than 20%, pending appeal."

It is clear therefore, that there is nothing compulsive with respect to the 20% limit which the Revenue authorities find themselves constrained by in considering the application for grant of stay or such appropriate relief. Furthermore, such administrative orders or circulars cannot fetter judicial discretion which is the essence of power under Section 220 of the Income Tax Act. In the present case, the order of the PCIT is a bare bones order which can be characterized as less than cryptic and reads as follows :

"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 outstanding demand. Hence, you are directed to pay 20% of total demand (balance 10%) in the case immediately, as mere filling of appeal against the assessment order cannot be considered as sufficient reason for stay of demand."

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 initiate or complete any coercive action.

These writ petitions are allowed in the above terms.

Dasti.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

MARCH 29, 2019

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