

Manoj Kumar Singh vs Union Of India & Ors on 8 July, 2024

Author: Yashwant Varma

Bench: Yashwant Varma

\$~45 to 54

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 9569/2022 & CM APPL. 28571/2022 (Interim
Direction), CM APPL. 31260/2022 (Extension Of Time)
MANOJ KUMAR SINGH

Through: Mr. Ajay Vohra, Sr Advocate
with Mr. Vijay K. Singh
Daizy Chawla, Advocates.

versus

UNION OF INDIA & ORS.

Through: Mr. Vipul Agrawal, SSC with
Mr. Gibran Naushad & Ms.
Sakashi Shairwal, JSCs
Mr. Indruj Singh Rai, SS
Mr. Sanjeev Menon & Mr.
Rahul Singh, JSCs & Mr
Anirudh Narendra V,
Advocates.

46

+ W.P.(C) 9570/2022 & CM APPL. 28574/2022 (Interim
Direction), CM APPL. 31198/2022 (Extension Of Time)
MANOJ KUMAR SINGH

Through:

versus

UNION OF INDIA & ORS.

Through:

47

+ W.P.(C) 9571/2022 & CM APPL. 28577/2022 (Interim
Direction), CM APPL. 31253/2022 (Extension Of Time)
MANOJ KUMAR SINGH

Through:

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versus

UNION OF INDIA & ORS.

Through:

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W.P.(C) 9572/2022 & CM APPL. 28580/2022 (Interim
Direction), CM APPL. 31254/2022 (Extension Of Tim
MANOJ KUMAR SINGH ..

Through: Mr. Ajay Vohra, Sr Advo
with Mr. Vijay K. Si
Daizy Chawla, Advoca

versus

UNION OF INDIA & ORS.

Through:

49

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W.P.(C) 9579/2022 & CM APPL. 28598/2022 (Interim
Direction), CM APPL. 31199/2022 (Extension Of Tim
MANOJ KUMAR SINGH

Through: Mr. Ajay Vohra, Sr Advo
with Mr. Vijay K. Si
Daizy Chawla, Advoca

versus

UNION OF INDIA & ORS.

Through: Mr. Indruj Singh Rai, S
Mr. Sanjeev Menon &
Rahul Singh, JSCs &
Anirudh Narendra V,
Advocates.

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W.P.(C) 9580/2022 & CM APPL. 28601/2022 (Interim
Direction), CM APPL. 31193/2022 (Extension Of Tim
MANOJ KUMAR SINGH

Through: Mr. Ajay Vohra, Sr Advo
with Mr. Vijay K. Si
Daizy Chawla, Advoca

versus

UNION OF INDIA & ORS.

Through: Mr. Indruj Singh Rai, S
Mr. Sanjeev Menon &
Rahul Singh, JSCs &
Anirudh Narendra V,
Advocates.

51

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W.P.(C) 9581/2022 & CM APPL. 28604/2022 (Interim
Direction), CM APPL. 31197/2022 (Extension Of Tim
MANOJ KUMAR SINGH .

Through: Mr. Ajay Vohra, Sr Advo
with Mr. Vijay K. Sin
Daizy Chawla, Advocat

versus

UNION OF INDIA & ORS.R

Through: Mr. Indruj Singh Rai, S
Mr. Sanjeev Menon & M
Rahul Singh, JSCs & M
Anirudh Narendra V,
Advocates.

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W.P.(C) 9582/2022 & CM APPL. 28607/2022 (Interim
Direction), CM APPL. 31374/2022 (Extension Of Tim
MANOJ KUMAR SINGH .

Through: Mr. Ajay Vohra, Sr Advo
with Mr. Vijay K. Sin
Daizy Chawla, Advocat

versus

UNION OF INDIA & ORS.R

Through: Mr. Indruj Singh Rai, S
Mr. Sanjeev Menon & M
Rahul Singh, JSCs & M
Anirudh Narendra V,

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W.P.(C) 9583/2022 & CM APPL. 28610/2022 (Interim
Direction), CM APPL. 31194/2022 (Extension Of Tim
MANOJ KUMAR SINGH .

Through: Mr. Ajay Vohra, Sr Advo
with Mr. Vijay K. Sin
Daizy Chawla, Advocat

versus

UNION OF INDIA & ORS.R

Through: Mr. Indruj Singh Rai, S
Mr. Sanjeev Menon & M
Rahul Singh, JSCs & M
Anirudh Narendra V,

Advocates.

54

+

W.P.(C) 9588/2022 & CM APPL. 28627/2022 (Interim Direction), CM APPL. 31271/2022 (Extension Of Time APPL. 12968/2024 (Addl. Document)
MANOJ KUMAR SINGH

Through: Mr. Ajay Vohra, Sr Advocate
with Mr. Vijay K. Sinha
Daizy Chawla, Advocate

versus

UNION OF INDIA & ORS.

Through:

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% 08.07.2024

1. These writ petitions impugn the order dated 06 June 2022 passed by the Principal Commissioner of Income Tax ["PCIT"] while This is a digitally signed order.

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2. The Court had vide an interim order dated 22 June 2022 made the following arrangements:-

"It is offered by the counsel for the petitioner that he shall make a deposit of 25% of 112 crores within four weeks. For the reasons stated above, it is directed that subject to deposit of Rs.25 Crores within four weeks from today, operation of order dated 06.06.2022 passed by Respondent No. 2 and orders dated 04.05.2022 passed by Respondent No. 4 shall remain stayed."

3. Pursuant to the aforesaid, the petitioner has admittedly tendered the deposit as per the directions framed by the Court. We are additionally informed that presently the main appeals against the assessment order have themselves been taken up for hearing by the concerned Commissioner of Income Tax (Appeals).

4. The petitioner was constrained to approach this Court principally on account of the PCIT enhancing its pre-deposit liability over and above 20%. Insofar as the aforesaid exercise of power by

the PCIT in terms of Para 4(C) of the Office Memorandum ["OM"] dated 29 February 2016 is concerned, we had in *Sushen Mohan Gupta vs Principal Commissioner Of Income Tax Central 2, Delhi & Anr.* [2024 SCC OnLine Del 2508], observed as follows:

"17. As would be evident from a reading of Para 4(C) of the aforesaid OM, the PCIT would be moved by an assessee in cases where it is aggrieved by the disposal of its stay application by the AO. The assessee in terms of the avenue of redress provided under Para 4(C) approaches the PCIT since it would conceivably be aggrieved by a direction of the AO to deposit 15% (now amended and to be read as 20% vide OM dated 31 July 2017). This is manifest from the words "...and the assessee is still aggrieved..."

appearing therein. The PCIT cannot possibly, and consequently, be recognised to stand empowered to subject the assessee to more onerous conditions.

18. In the facts of the present case, the PCIT, rather than examining This is a digitally signed order.

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Viewed in that light, it is manifest that the order impugned would not sustain.

5. In our considered opinion and since the appeals themselves have been taken up for hearing, the ends of justice would warrant the Assessing Officer ["AO"] examining the issue of pre-deposit afresh bearing in mind the law as laid down by the Court in *National Association Of Software And Services Companies (Nasscom) Vs Deputy Commissioner Of Income Tax (Exemption) Circle 2 (1), Delhi And Ors* [2024:DHC:2078-DB].

6. While examining the OM concerned and the principles that must govern the exercise of the power to stay, we had in NASSCOM laid down the following principles:

"12. It must at the outset be noted that the two OM's noticed above neither prescribe nor mandate 15% or 20% of the outstanding demand as the case may be, being deposited as a pre-condition for grant of stay. The OM dated 29 February 2016 specifically spoke of a discretion vesting in the AO to grant stay subject to a deposit at

a rate higher or lower than 15% dependent upon the facts of a particular case. The subsequent OM merely amended the rate to be 20%. In fact, while the subsequent OM chose to describe the 20% deposit to be the "standard rate", the same would clearly not sustain in light of the discussion which ensues.

13. We note that while dealing with an identical question, we had in *Avantha Realty Ltd. vs The Principal Commissioner of Income Tax Central Delhi & Anr.* observed as under:-

"2. We note that the impugned orders are principally based on This is a digitally signed order.

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3. Insofar as the aforesaid Office Memorandum is concerned, suffice it to note that while considering its ambit the Supreme Court in *Principal Commissioner of Income Tax and Others vs. LG Electronics India Private Limited* had held as follows:-

"1. Delay condoned. Leave Granted.

2. Having heard Shri Vikramjit Banerjee, learned ASG appearing on behalf of the appellant, and giving 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.

3. The appeal is disposed of accordingly. Pending application, if any, shall stand disposed of."

14. As is manifest from the order passed by the Supreme Court in *Principal Commissioner of Income Tax & Ors. vs LG Electronics India Pvt. Ltd.*, it had been emphasized that the administrative circular would not operate as a fetter upon the power otherwise conferred on a quasi-judicial authority and that it would be wholly incorrect to view the OM as mandating the deposit of 20%, irrespective of the facts of an individual case. This would also flow from the clear and express language employed in sub-section (6) of Section 220 which speaks of the Assessing Officer being empowered "in his discretion and subject to such conditions as he may think fit to impose in the circumstances of the

case". The discretion thus vested in the hands of the AO is one which cannot possibly be viewed as being cabined by the terms of the OM.

15. The issue of a grant of stay pending appellate remedies being pursued arose for the consideration of a Division Bench of the Court in *Dabur India Limited vs Commissioner of Income Tax (TDS) & Anr.* where it was pertinently observed as under:

"6. Having heard learned counsel for the parties and having perused the two Office Memorandums, in question, this Court This is a digitally signed order.

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8. In the present case, the impugned order is non- reasoned. The three basic principles i.e. the prima facie case, balance of convenience and irreparable injury have not been considered while deciding the stay application."

16. More recently in *Indian National Congress vs Deputy Commissioner of Income Tax Central - 19 & Ors.* we had an occasion to examine the scope of the power conferred by Section 220(6) of the Act and which was explained in the following terms:

"22. However, as we read the order impugned, the matter does not appear to have proceeded along those lines before the ITAT. The tone and tenor of submissions clearly appear to have been concentrated upon the merits of the assessment order. Although the issue of payment of 20% of the outstanding demand appears to have been raised, the same came to be summarily rejected by the ITAT in cryptic terms. Notwithstanding the above, it becomes pertinent to observe that the 20% deposit which is spoken of in the OM dated 31 July 2017 is not liable to be viewed as a condition etched in stone or one which is inviolable. The OM merely seeks to provide guidance to the authorities to bear in mind certain aspects while considering applications for stay of demand pending an appeals remedy being pursued. The OM is not liable to be read as conferring an indefeasible right upon the assessee to claim a stay of a tax liability by merely offering or consenting to deposit 20% of the outstanding liability. Ultimately, it is for the authorities to examine and consider

what amount would be sufficient to securitise the interest of the Revenue and thus a just balance being struck. The quantum of the deposit that would be required to be made would ultimately depend upon the facts and circumstances of each case.

.....

23. The position which thus emerges is that while 20% is not This is a digitally signed order.

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17. As explained in Indian National Congress, the 20% which is spoken of in the OM cannot possibly be viewed as being an inviolate or inflexible condition. The extent of the deposit which an assessee may be called upon to make would have to be examined and answered bearing in mind factors such as prima facie case, undue hardship and likelihood of success. We note that while dealing with the question of the claim of stay as made by an assessee and the competing obligation to protect the interest of the Revenue, the Supreme Court in Benara Valves Ltd. & Ors. Vs Commissioner of Central Excise & Anr. had elucidated the legal position in the following words:

"6. Principles relating to grant of stay pending disposal of the matters before the forums concerned have been considered in several cases. It is to be noted that in such matters though discretion is available, the same has to be exercised judicially.

7. The applicable principles have been set out succinctly in Silliguri Municipality v. Amalendu Das and Samarias Trading Co. (P) Ltd. v. S. Samuel and CCE v. Dunlop India Ltd.

8. It is true that on merely establishing a prima facie case, interim order of protection should not be passed. But if on a cursory glance it appears that the demand raised has no leg to stand on, it would be undesirable to require the assessee to pay full or substantive part of the demand. Petitions for stay should not be disposed of in a routine matter unmindful of the consequences flowing from the order requiring the assessee to deposit full or part of the demand. There can be no rule of universal application in such matters and the order has to be passed keeping in view the factual scenario involved. Merely because this Court has indicated the principles that does not give a license to the forum/authority to pass an order which cannot be sustained

on the touchstone of fairness, legality and public interest. Where denial of interim relief may lead to public mischief, grave irreparable private injury or shake a This is a digitally signed order.

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9. It has become an unfortunate trend to casually dispose of stay applications by referring to decisions in Siliguri Municipality and Dunlop India cases without analysing factual scenario involved in a particular case.

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11. Two significant expressions used in the provisions are "undue hardship to such person" and "safeguard the interests of Revenue". Therefore, while dealing with the application twin requirements of considerations i.e. consideration of undue hardship aspect and imposition of conditions to safeguard the interest of Revenue have to be kept in view.

12. As noted above there are two important expressions in Section 35-F. One is undue hardship. This is a matter within the special knowledge of the applicant for waiver and has to be established by him. A mere assertion about undue hardship would not be sufficient. It was noted by this Court in S. Vasudeva v. State of Karnataka that under Indian conditions expression "undue hardship" is normally related to economic hardship. "Undue" which means something which is not merited by the conduct of the claimant, or is very much disproportionate to it. Undue hardship is caused when the hardship is not warranted by the circumstances.

13. For a hardship to be 'undue' it must be shown that the particular burden to observe or perform the requirement is out of proportion to the nature of the requirement itself, and the benefit which the applicant would derive from compliance with it.

14. The word "undue" adds something more than just hardship. It means an excessive hardship or a hardship greater than the circumstances warrant

15. The other aspect relates to imposition of condition to safeguard the interest of Revenue. This is an aspect which the Tribunal has to bring into focus. It is for the Tribunal to impose such conditions as are deemed proper to safeguard the interests of the Revenue. Therefore, the Tribunal while dealing with the application has to consider materials to be placed by the assessee relating to undue hardship and also to stipulate condition as required to safeguard the interest of the Revenue."

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18. We find a lucid explanation of the legal position with respect to pre-deposit and the grant of stay in a decision rendered by a Division Bench of the Allahabad High Court in *ITC Ltd v. Commissioner (Appeals), Customs & Central Excise* where the Court had held as follows:

"18. In *Income-tax Officer v. M.K. Mohammad Kunhi*, AIR 1969 SC 430, the Apex Court held that stay should be granted if a strong prima facie case has been made out and in the most deserving and appropriate cases where entire purpose of the appeal will be frustrated or rendered nugatory by allowing the recovery proceedings to continue, during the pendency of the appeal.

19. In *B.P.L. Sanyo Utilities and Appliances Ltd. v. Union of India*, 1999 (108) E.L.T. 621, the Karnataka High Court held that in the matter of grant of waiver of pre-deposit, each case has to be examined on its own merit and no hard and fast rule can be formulated.

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21. In *Mehsana District Cooperative Milk P.U. Ltd. v. Union of India*, 2003 (154) E.L.T. 347 (S.C.), the Hon'ble Supreme Court considered the case of dispensation of pre-deposit condition and held that the Appellate Authority must address to itself to the prima facie merits of the appellant's case and upon being satisfied of the same, determine the quantum of deposit taking into consideration the financial hardship and other such related factors.

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23. In *J.N. Chemicals Pvt. Ltd. v. CEGAT*, 1991 (53) E.L.T. 543, the Calcutta High Court while considering the provisions of pre-deposit of duty and penalty, observed that where the authority concerned comes to the conclusion that the appellant has a good prima facie case so as to justify the dispensation of requirement of pre-deposit of the disputed amount on duty and penalty, the authority must exercise its discretion to dispense with such requirement particularly in a case where the appellant satisfies the authority concerned that its case is squarely covered by the decision of a competent Court binding on it. In such an eventuality, asking the appellant to deposit the duty demanded and penalty levied would undoubtedly cause
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"If a statute invests a public officer with authority to do an act in a specified set of circumstances, it is imperative upon him to exercise his authority in a manner appropriate to the case when a party interested and having a right to apply moved in that behalf and circumstances for exercise of authority are shown to exist. Even if the words used in the statute prima facie enabling, the courts will readily infer a duty to exercise power which is invested in aid of enforcement of a right-public or private-of a citizen."

24. Thus, even where enabling or discretionary power is conferred on a public authority, the words which are permissive in character, require to be constituted, involving a duty to exercise that power, if some legal right or entitlement is conferred or enjoyed, and for the effectuating the such right or entitlement, the exercise of such power is essential. The aforesaid view stands fortified in view of that fact that every power is coupled with a duty to act reasonably and the Court/Tribunal/Authority has to proceed having strict adherence to the provisions of law. [Vide *Julius v. Lord Bishop of Oxford*, (1880) 5 Appeal Cases 214; *Commissioner of Police, Bombay v. Gordhandas Bhanji*, 1951 SCC 1088 : AIR 1952 SC 16; *K.S. Srinivasan v. Union of India*, AIR 1958 SC 419; *Yogeshwar Jaiswal v. State Transport Appellate Tribunal*, (1985) 1 SCC 725 : AIR 1985 SC 516; *Ambica Quarry Works etc. v. State of Gujarat*, (1987) 1 SCC 213 : AIR 1987 SC 1073].

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26. In *Bongaigaon Refinery & Petrochem Ltd. v. Collector of Central Excise (A)*, 1994 (69) E.L.T. 193 (Cal.), the Calcutta High Court, while examining a similar issue and placed reliance upon a large number of judgments and held that the phrase "undue hardship" would cover a case where the appellant has a strong prima facie case. The phrase also covers a situation where there is an arguable case in the appeal. If the Appellate Authority forms the opinion that appellant has a strong prima facie case, it should dispense with the pre-deposit condition altogether. However, where it is of the opinion that the appellant has no arguable case, the Appellate Authority must safeguard the interest of the Revenue, as the same also cannot be jeopardised.

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27. In *Sri Krishna v. Union of India*, 1998 (104) E.L.T. 305, Delhi High Court considered the issue of dispensation of pre- deposit condition and the concept of undue hardship while considering the

provisions of Section 129E of the Customs Act, 1962 and Section 35 of the Act and held that the Court while considering the case of the appellant should examine as to whether the Appellate Authority or Tribunal have dealt with the plea raised by the appellant before it and have considered as to whether the appellant has a prima facie case on merit. In case the appellant has a strong prima facie case, as is most likely to exonerate him from liability and the Appellate Authority/Tribunal insists on the deposit of the amount, it would amount to undue hardship.

28. In *Hoogly Mills Co. Ltd. v. Union of India*, 1999 (108) E.L.T. 637, the Calcutta High Court again reiterated the view that if the appellant has a strong prima facie case, he is entitled of waiving the pre-deposit condition and in case the Appellate Authority insists to deposit the amount so assessed or penalty so levied, it will cause undue hardship to the assessee. While considering the said case, the Court placed reliance upon the large number of judgments including *Tata Iron & Steel Co. Ltd. v. Commissioner (Appeals), Central Excise*, 1998 (98) E.L.T. 50; *Hari Fertilizer v. Union of India*, 1985 (22) E.L.T. 301 (All.); *Re. American Refrigeration Co. Ltd.*, 1986 (23) E.L.T. 74; and *V.I.T. Sea Foods v. Collector of Customs*, 1989 (42) E.L.T. 220 (Ker.), wherein the Courts had expressed the similar view.

29. In *I.T.C. Ltd. v. Commissioner of Central Excise and Customs (Appeals)* ILR 2000 KAR 25, while examining the issue of pre- deposit under Section 35 of the Act, after considering a large number of judgments of the Apex Court and various High Courts, it was held as under:

"While considering the case of 'undue hardship', the authority is required to examine the prima facie on merits of the dispute as well. Pleading of financial disability would not be the only consideration. Where the case is fully covered in favour of the assessee by a binding precedent like that of the judgment of the Supreme Court, jurisdictional High Court or a Special Bench of the Tribunal, then to still insist upon the deposit of duty and penalty levied would certainly cause undue hardship to the assessee. Absence of the financial hardship in such a case would be no ground to decline the dispensation of pre-deposit under the proviso to Section 35F. The power to dispense with such deposit is conferred under the authorities has to be exercised precisely in cases like this type and if it is not This is a digitally signed order.

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35. In view of the above, the aforesaid authorities make it clear that the Court should not grant interim relief/stay of the recovery merely by asking of a party. It has to maintain a balance between the rights of an individual and the State so far as the recovery of sovereign dues is concerned. While considering the application for stay/waiver of a pre-deposit, as required under the law, the Court must apply its mind as to whether the appellant has a strong prima facie case on merit. In case it is covered by the judgment of a Court/Tribunal binding upon the Appellate Authority, it should apply its mind as to whether in view of the said judgment, the appellant is likely to succeed on merit. If an appellant having strong prima facie case, is asked to deposit the amount of assessment so made or penalty so levied, it would cause undue hardship to him, though there may be no financial restraint on the appellant running in a good financial condition. The arguments that appellant is in a position to deposit or if he succeeds in appeal, he will be entitled to get the refund, are not the considerations for deciding the application. The order of the Appellate Authority itself must show that it had applied its mind to the issue raised by the appellant and it has been considered in accordance with the law. The expression "undue hardship" has a wider connotation as it takes within its ambit the case where the assessee is asked to deposit the amount even if he is likely to exonerate from the total liability on disposal of his appeal. Dispensation of deposit should also be allowed where two views are possible. While considering the application for interim relief, the Court must examine all pros and cons involved in the case and further examine that in case recovery is not stayed, the right of appeal conferred by the legislature and refusal to exercise the discretionary power by the authority to stay/waive the predeposit condition, would be reduced to nugatory/illusory. Undoubtedly, the interest of the Revenue cannot be jeopardized but that does not mean that in order to protect the interest of the Revenue, the Court or authority should exercise its duty under the law to take into This is a digitally signed order.

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19. Though some of the decisions noticed by us hereinabove pertained to pre-deposit prescriptions placed by a statute, the principles enunciated therein would clearly be of relevance while examining the extent of the power that stands placed in the hands of the AO in terms of Section 220(6) of the Act. In our considered opinion, the respondents have clearly erred in proceeding on the assumption that the application for consideration of outstanding demands being placed in abeyance could not have even been entertained without a 20% pre-deposit. The aforesaid stand as taken is thoroughly misconceived and wholly untenable in law."

7. This we observe bearing in mind the challenge which stands raised to the assessed income at the behest of the writ petitioner with Mr. Vohra laying reliance upon the following tabular statement:

Sr No.	A.Y	W.P (C) NO.
1	2011 - 12	9581/2022
2	2012 - 13	9580/2022
3	2013 - 14	9572/2022
4	2014 - 15	9569/2022
5	2015 - 16	9570/2022
6	2016 - 17	9571/2022
7	2017 - 18	9582/2022
8	2018 - 19	9588/2022
9	2019 - 20	9583/2022
10	2020 - 21	9579/2022

8. In our considered opinion, the issues which are flagged in support of the challenge to the assessment need not be examined by us at this stage since all rights and contentions would be open to be examined and evaluated by the AO to whom the matter is proposed to be remanded.

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9. We accordingly allow the instant writ petitions and quash the impugned orders dated 06 June 2022 and 04 May 2022. The matter shall stand remitted to the concerned AO who shall examine the issue of pre-deposit in terms of the OM dated 29 February 2016 and 31 July 2017 bearing in mind the principles of law as laid down in NASSCOM.

10. The deposit already made pursuant to the directions of the Court shall continue to be held by the respondents subject to fresh orders being passed by the concerned AO.

11. We accord liberty to the petitioner to supplement the petitions for stay by filing such additional material as may be considered expedient. The AO shall proceed in the matter in accordance with law after affording an opportunity to the petitioner.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 8, 2024/sk/rk This is a digitally signed order.

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