



ppn

501.WP.5388.23.docx

Digitally signed
by PRACHI
PRANESH
NANDIWADEKAR
Date: 2025.01.16
15:10:11 +0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5388 OF 2023

Indrayani Ferrocast Private Limited
Represented through its Director,
Vinod Vedprakash Goyal
Age: 65 years, Occ: Business,
Gat No.225, Dhanore,
Alandi Markal Road,
Village Dhanore, Tal. Khed,
Pune-412105

.. Petitioner

Versus

1. Deputy or Assistant Commissioner of
Income Tax Central Circle 1(2), Pune
6th floor, Bodhi Tower,
Salisbury Park,
Pune-411037.
2. Principal Commissioner of Income
Tax (Central), Pune
6th floor, Bodhi Tower,
Salisbury Park,
Pune-411037.
3. Union of India
through the Ministry of
Finance, Department of Revenue,
Room No.46, North Block,
New Delhi-110001.

.. Respondents

Mr. Sham V. Walve a/w Mr. Bhavik Chheda, Mr. Sanket S. Bora (through
VC) and Ms. Amiya Das i/by SPCM Legal for the petitioner.
Mr. Suresh Kumar for the respondents.

**CORAM : M. S. Sonak &
Jitendra Jain, JJ.**
DATE : 14 January 2025

P. C. (Per Jitendra Jain, J.):-

1. Rule. Rule made returnable immediately at the request and with the consent of the learned counsel for the parties.
2. By this petition under Article 226 of the Constitution of India, the petitioner has challenged order dated 24 February 2023 passed by the ACIT [(Central Circle 1(2)], Pune, order dated 16 March 2023 passed by the PCIT (Central), Pune and the order dated 23 March 2023 passed by the PCIT (Central), Pune whereby the petitioner's request for stay of demand for assessment year 2021-22, pending appeal, came to be rejected and the petitioner was directed to pay 20% of the demand in six installments.
3. The petitioner is a company engaged in the business of manufacturing M. S. Billets from melting MS Scrap. The petitioner filed its return of income declaring total income of Rs.7.52 crore. On account of search and seizure operation, the case of the petitioner was selected for complete scrutiny and an assessment order came to be passed on 30 December 2022 assessing income at Rs.23.39 crore. In the said assessment order, major additions are towards bogus purchases amounting to Rs.15.86 crore. Demand of Rs.5.86 crore was raised in the said order.
4. The petitioner filed an appeal against the aforesaid order challenging the additions and the said appeal is pending as of today.
5. On 9 February 2023, the petitioner made an application for stay

of the demand of Rs.1.17 crore, being 20% of the original demand of Rs.5.86 crore. In the said application, it is stated that the petitioner has a *prima facie* good case and great hardship would be caused if full stay is not granted. The said application came to be rejected by the ACIT vide order dated 24 February 2023. The ACIT has relied upon the reasoning given in the assessment order to reject the *prima facie* case of the petitioner. The petitioner was directed to pay 20% of the disputed demand failing which, coercive action was to be taken.

6. On 25 February 2023, the petitioner made an application for stay of demand to the PCIT against the above order rejecting the prayer for complete stay of demand raised for AY 2021-22. The said application came to be rejected by the PCIT vide order dated 16 March 2023. However, the PCIT directed the petitioner to pay of 1.17 crore in six equal installments of Rs.0.19 crore starting from March 2023 till August 2023. The said order further states that on payment of installments, the balance demand of Rs.4.68 crore will be stayed till the appeal of the petitioner is decided.

7. On 20 March 2023, the petitioner once again filed an application for stay of demand and proposal to make payment of only Rs.0.11 crore only in two equal installments. The said application came to be rejected by the PCIT vide order dated 23 March 2023.

8. The petitioner, is now before this Court challenging the orders passed by the ACIT and PCIT rejecting the complete stay of the demand.

9. Mr. Walve, learned counsel for the petitioner, submits that the issue of bogus purchases involved is covered by various decisions of this Court and, therefore, directing payment of 20% of the demand would cause undue hardship. Learned counsel for the petitioner, therefore, prayed that this Court, in the exercise of its extraordinary jurisdiction, should stay the whole of the demand of Rs.5.86 crore without directing the petitioner even to pay 20% of the demand.

10. Mr. Suresh Kumar, learned counsel for the respondents, vehemently opposed the petition and the prayer and prayed for dismissal on the ground that no case is made out for a full stay of the demand. Mr Suresh Kumar further submitted that the PCIT had directed the petitioner to make payment of 20% of the demand in instalments which the petitioner has failed, and till today, no payment has been made. Mr. Suresh Kumar further submitted that additions are based on strong grounds as evident in the assessment order, no *prima facie* case is made out.

11. We have heard the learned counsel for the petitioner and the respondents.

12. The first issue that must be considered is whether the petitioner has made a *prima facie* case for a full stay of demand of Rs.5.86 crore. We have perused the assessment order and in paragraphs 5 and 6 of the said order, detailed reasoning is given by the Assessing Officer for concluding that the claim made on account of purchases from various

parties is not genuine. The petitioner was given sufficient opportunities and materials on the basis of which the additions were made. The proceedings were initiated on account of search action at the premises of the petitioner. The Assessing Officer has carried out detailed investigation and come to a conclusion that the purchases are non-genuine. Statements of various persons were also recorded for coming to the said conclusion. In our view, based on these findings in the assessment order, it cannot be said that the additions made on account of non-genuine purchases is totally unwarranted at least for the purpose of concluding not dispensing the payment of 20% of the demand. The petitioner has not presented any documents showing its financial incapacity to pay 20% of demand.

13. The petitioner has been merely filing application after application to delay the recovery proceedings. In the order dated 16 March 2023, the PCIT records that the petitioner was granted an opportunity of being heard but has neither attended nor filed any reply. The case of the petitioner on account of high pitch assessment cannot be accepted since in the present case, the additions have been made based on incriminating documents during the course of search action and investigation carried out by the Assessing Officer in the assessment proceedings. The petitioner was given sufficient opportunities to rebut the same, and it is only after detailed investigation that the additions have been made.

14. This is not a case where the gross profit disclosed by the petitioner is sought to be rejected, but this is a case where the petitioner has failed to prove the purchases and, therefore, the contention of the petitioner that only gross profit additions could have been made and, therefore, the rejection of entire stay is unjustified is to be rejected. We may also point out that accepting the submission of the petitioner on account of merely making additions on account of gross profit would be making the provision of the Act redundant which provides that unexplained expenditure cannot be allowed as deduction. If the contention of the petitioner that the additions only on account of gross profit can be made is to be accepted, then, it will amount to giving deduction of non-genuine purchases. The issue of whether the purchases are genuine or non-genuine is a question of fact to be determined on the facts of each particular case and, therefore, the bald statement of the petitioner's counsel that various decisions of the Coordinate Bench cover the issue cannot be accepted since we have not been shown any judgment wherein on these very facts, the additions on account of non-genuine purchases have been allowed as deduction.

15. In our view, the petitioner is only attempting to delay the recovery proceedings of 20% of the demand. In our view, no case is made out for a complete stay of demand.

16. In view of the above, since the petitioner has not made out any *prima facie* case nor shown its financial incapacity to pay 20% of the

demand, we, in our extraordinary jurisdiction, refrain from interfering with the orders challenged in the present petition and dismiss this petition with no order as to costs.

17. We make it clear that observations made in this order are only for adjudication of whether any case is made out for full stay of demand, and the same should not be construed as our observations on the merits of the case which is pending in appeal.

(Jitendra Jain, J.)

(M. S. Sonak, J.)