

AO to release refund beyond 20% of tax demand even if 65% of tax demand adjusted by CPC: HC

Facts of the case - Neo Structo Construction (P.) Ltd. v. ACIT - [2023] (Gujarat)

Assessee was company registered in India. It filed return of income declaring total income at Rs. 43,01,51,910/- for the assessment year 2012-2013. The case was selected for scrutiny and an assessment order was passed raising tax demand upon the assessee. Assessee filed an appeal before the CIT(A) against the assessment order.

Centralized Processing Centre (CPC) adjusted the tax demand against the refund payable to the assessee for various years. A total of 65.43% of the total demand raised on the assessee was adjusted against the refund payable.

Assessee filed an application before the AO requesting to release the refund of an amount adjusted beyond 20% of the tax demand. Assessee cited the CBDT memorandum which prescribes the payment of 20% of the disputed amount if the demand is contested before the CIT(Appeals). However, AO rejected the application.

Assessee approach the Gujarat High Court for relief.

Decision of the case :

- The Gujarat High Court held that as per the CBDT's guidelines, AO is required to grant stay of demand till disposal of the First Appeal where the outstanding demand is disputed before the CIT (Appeals) on payment of 20% of the disputed demand.
- The guidelines are issued by the Board for all Assessing Officers, who are to act upon the same quickly and to abide by the same observing its spirit. It is obviously to be applied on an application moved by the assessee in a pending appeal.
- In the given case, almost 65% of the demand for the Assessment Year 2012-13 was adjusted with pending refunds. This was way beyond the percentage which has been contemplated under the CBDT's Memorandum.
- The only reason given by the AO for denying and not acceding to the request of the assessee was that the adjustment of the refund against the demand was done by the CPC system. This highhanded approach on the part of AO was neither palatable nor endorsable.
- It is a matter of concern that the CBDT's attempts to establish guidelines and standardize procedures for the benefit of citizens will be ineffective unless officers in the field follow them both literally and in spirit.
- Thus, the writ petition was allowed and AO was directed to refund the excess amount adjusted beyond the 20% demand raised for the assessment year 2012-13.