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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 15337/2023 & CM APPL. 61508/2023, CM APPL. 61509/2023

PPK NEWSCLICK STUDIO PVT LTD..... Petitioner

Through: Mr. Devadatt Kamat, Sr. Advocate
with Mr. Rohit Sharma, Mr. Nikhil
Purohit, Mr. Jatin Lalwani, Mr.
Rajesh Inamdar and Mr. Anubhav
Kumar, Advocates.

versus

PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX
CENTRAL DELHI AND ANR..... Respondent

Through: Mr. Abhishek Maratha, Mr. Parth
Senwal and Mr. Pratyush, Advocates.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

29.11.2023

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1. Present petition has been filed challenging the orders dated 3rd November, 2023 and 20th February, 2023, passed by the respondents whereby the petitioner's application for stay of demand during the pendency of the appeal before the Commissioner of Income Tax (Appeals) against the assessment order dated 30th December, 2022 has been dismissed. The petitioner further prays for stay of demand during the pendency of the petitioner's appeal before the Commissioner of Income Tax (Appeals).

2. Learned senior counsel for the petitioner states that the discretion to stay the demand during the pendency of an appeal has to be exercised

judiciously and reasonably, based on relevant grounds, with due application of mind, and must not be exercised arbitrarily or capriciously or based on irrelevant considerations. He states that in complete violation of this mandate, the impugned orders are arbitrary in nature, have been passed mechanically, and suffer from complete non-application of mind.

3. He states that the impugned order fails to consider that the petitioner has a strong *prima facie* case on merits as the petitioner's Service Agreement with Justice and Education Fund Inc. (hereinafter referred to as 'JEF'), contents supplied, receipts through proper banking channels were duly disclosed in the ITR and legitimacy of business activity, or expenditure of the petitioner were undisputed. He emphasises that the prices of deliverables were mentioned item wise and the proprietary rights in the articles, videos and short scripts were to belong exclusively to JEF under the Service Agreement executed between the parties. The relevant portion of the Service Agreement referred to and relied upon by learned senior counsel for the Petitioner is reproduced hereinbelow:-

“3. **PRICES OF DELIVERABLES**

a. *The unit prices of deliverables are as follows:*

	<i>Item</i>	<i>Unit price in USD</i>
<i>1</i>	<i>Articles</i>	<i>\$200</i>
<i>2</i>	<i>Videos</i>	<i>\$1300</i>
<i>3</i>	<i>Short Script</i>	<i>\$150</i>

xxx

xxx

xxx

8. PROPRIETARY RIGHTS:

8.1 *The Newslick agrees that during the course of provision of Services under this Agreement, the Newslick shall fully and promptly disclose to Company, any and all inventions, improvements, discoveries, innovations, developments, processes, techniques and other technical materials, whether conceived by Newslick independently or in conjunction with Company, during*

the provision of Services to the Company under this Agreement (“Work Product”). Company shall be deemed the author of such Work Product, and the Work Product, along with all intellectual property rights associated with it, and all renewals and extensions thereof (the “Property Rights”), shall be from inception and thereafter remain the exclusive property of the Company as “work made-for-hire”. For the avoidance of doubt, to the extent the Work Product is developed in conjunction with Company, Company shall own as its exclusive property all the results and proceeds thereof, in whatever stage of completion, all of which shall be considered a work made-for-hire for Company, including all written work, research, computer programs, designs, ideas, concepts, drawings, or other tangible or intangible work product produced, and Company shall own all rights now known or hereafter devised, in all media now known or hereafter devised, in perpetuity throughout the universe in the production, manufacture, recodation and reproduction, by any art, medium or method, of the same, and in and to copyright, trademark and/or patent, of the same.”

4. He contends that doubting of genuineness of the transaction is based on considerations alien to Section 68 for which the Assessee is only required to show legitimate receipt of the money from the claimed person through normal banking channels, which has been undisputedly proven by the petitioner.
5. Learned senior counsel for the petitioner submits that there is no requirement for a pre-deposit for the purposes of granting stay of deposit under Section 220(6) of the Income Tax Act, 1961 (for short ‘Act, 1961’). He further states that the Office Orders of the CBDT regarding the same are not binding and do not act as a fetter on the discretionary powers vested under Section 220(6) as held by the **Supreme Court in CIT V. LG Electronics India (P) Ltd.**, (2018) 18 SCC 447.
6. Learned senior counsel for the petitioner states that the respondents erred in rejecting the petitioner’s application for stay by holding that the petitioner had not demonstrated its financial stringency, which is entirely untenable and contrary to the financial statements like balance sheet placed

on record by the petitioner. He further states that in a case as the present one, where the assessee demonstrates a strong *prima facie* case, that in itself is sufficient ground for necessitating a stay on demand.

7. Undoubtedly, the power vested under Section 220(6) of the Act, 1961 is discretionary and it is not mandatory to pre-deposit 20% of the assessed amount to obtain stay of deposit at the stage of filing the appeal before the Commissioner of Income Tax (Appeals). In the present case, the Assessing Officer in the assessment order has given a number of cogent findings against the petitioner. In fact, the Assessing Officer after analyzing a number of relevant facts has virtually held that the transaction between the petitioner and the foreign entity was based on 'reverse engineering'. The relevant findings of the Assessing Officer are reproduced hereinbelow:-

“5.2.1 It was seen that the amount of funds to be received from M/s Justice and Education Fund was predetermined without any specifications about the services.....

5.3.1 Further, the agreement shows that the party receiving the services is to give 90% of the 'Budget' even before start of quarter and same is not directly linked with the quality of services to be delivered. In service industry such types of agreements are not seen generally.....

5.3.2 Vide questionnaire issued u/s 142(1), the assessee was asked to make a link between the receipts and the expenses incurred especially in the view of the fact that approx 95% receipts are from one party only. In service sector if an entity is receiving such a huge part of the receipt from one entity then it is natural that the expenses incurred are geared towards delivery of those critical services and the linkage between deliverables and cost incurred can be established with relative ease. But strangely assessee is not able to correlate the expenses with the receipts when only one party is the source of majority of the receipts.....

5.4.1out of 2628 pieces of content for which a remittance of Rs 15.53 crore was received from JEF, Assessee submitted the time stamp and date stamp of 558 links. But out of these only 47 links i.e. roughly 16% were uploaded within a matter of 5-6 days. Rest were all posted almost at same time. Now, it must also be appreciated that there is 12 Hrs time gap between US std time and Indian Standard time. Considering same, it can be

concluded that the content was uploaded almost at same time. This again shows the non-genuineness of alleged provision of services for which remittance from foreign party was received by Assessee. No prudent businessmen will pay such a handsome amount for creation of content without having any exclusivity to the content for even a bare minimum time. This shows that the action of uploading content on People's Dispatch site is just an smoke-screen to justify the receipt of remittance to create the impression that the receipts are in lieu of services provided. Hence, the reply of Assessee cannot be taken at face value.....

5.5it is seen that as per newly inserted clause 1A, The Justices and Education Fund may give directions to Newslick for managing the content of portal and such other services will also be provided as may be required by the company. Assessee was show caused to prove/establish whether any such directions were ever received by Newslick.....However, on perusal of same, it is seen that Assessee has only submitted some communication to show how joint content development is being done. The proofs submitted falls short of even basic level of direction. It may be noted that as per his own submission, Assessee has billed the foreign entity for 1469 stories, 763 videos and 396 scripts for getting revenue of over Rs 15.53 crores. From submissions, it is not clear how and when direction for desired content were ever received by Assessee from foreign entity

5.5.1it is noticed that Assessee has not received any bidding/substantive directions/guidelines which otherwise would have been given by The Justices and Education Fund regarding the topic, content and the relevance of issues for delivery of the services. This abnormality is when seen in context of receiving more than Rs.15.53 crore casts strong aspersions on the agreement signed and genuineness of alleged provided services.

5.6 From the perusal of contracts signed between Assessee and JEF it is seen that as per the initial signed service Agreement on 01.01.2019, JEF shows an express and unambiguous intention to enjoy the exclusive ownership / proprietary rights over the content that was to be supplied by the assessee. But strangely, the conduct of the Assessee and other contracting party show that any such right has been thrown to the wind because the very same content was published in online space by Assessee also. Assessee has replied that the content may be used by anybody after giving credit to the Foreign party and is freely available and can be used by anybody. From such actions it is apparent that Assessee was acting more in the nature of Agent of JEF and the receivables were pre-determined and were bound to flow to Assessee. Then, only to given a colour to the remittance a façade of agreement was raised for receiving remittance from foreign party.....

5.7 *The factual matrix related to business transaction undertaken between parties clearly establishes the fact that the funds received from the foreign entities in the form of remittances towards services is only a modus operandi to introduce unexplained funds in M/s PPK Newsclick Studio Pvt Ltd. The practice of receiving pre-determined advances is against the commercial prudence and the established practices in the field of services claimed to be discharged by the company.....Assessee has not been able to establish basic parameters like receiving binding directions from recipient of services / no acceptance-rejection practice by recipient of services w.r.t. the transactions related to receipt of revenue/remittances from foreign parties.....*

5.8

Further, in the field of the art/media, normally the entity which requires the content normally has a major say in the planning and initial stage of any creative activity. Invariably, there is a major involvement of the entity which make the investment at the initial stage. So that, a direction may be given at the initial stage itself for creation of content as per requirement of audience/inclination of the receiver of content/taste of the audience.....

5.9 *Further, on examination of MCA Database, it is gathered that M/s PPK Newsclick Studio Private Limited, was erstwhile existing as M/s PPK Newsclick Studio LLP. As per the details filed in Income Tax Returns of M/s PP Newsclick Studio LLP, it was incorporated on 28.04.20215 and was not carrying out any operations. Further, on analysis of the digital evidences gathered in the survey proceedings, it is revealed that the LLP was converted into Private Limited company only for the purpose of receiving foreign funding.....*

Hence on perusal of these emails it can be clearly seen that the said conversion of LLP into company was done only for the purpose of receiving foreign funds from WWM in form of share premium in other years. The finding related to infusion of fund in form of share premium further strengthens the fact that the assessee has been undertaking activities to receive foreign remittance in one form or another....

6.4 *....It was also found that there was no exclusivity factor with respect to the services provided. It would not be out of place to mention that the same videos and the article that were provided in lieu of revenue received/recognized were also posted by the assessee on his own portal/online space. It is beyond comprehension that why would anybody make such major payments (running in crores) for receiving some videos/articles without having any exclusive ownership right.....*

6.5If an agreement signed between two parties is nothing more than an eye wash then the genuineness of the transactions goes for a toss. The action of the parties in the instant case does not draw confidence to give a sense of genuineness with respect to the alleged transaction for the provisions of the services. **From the perusal of service agreements and the details as submitted by assessee, it emerges that the service agreements signed for the creation and delivery of content against which a foreign remittance was received are nothing but sham/make-believe agreements.**

6.6 In view of above-mentioned facts and circumstances, **it is clear that the genuineness of the revenue receipts has not been not proven by the assessee.....”**

(emphasis supplied)

8. Keeping in view the aforesaid findings, this Court is of the view that the petitioner has not been able to make out a *prima facie* case in its favour. To put it mildly, the petitioner has a ‘lot to answer’ in the appeal.

9. The petitioner’s plea of financial stringency based on its balance-sheet also inspires no confidence as according to the Assessing Officer, the accounts have not been properly maintained. One of the instance given by the Assessing Officer in the assessment order is reproduced hereinbelow:-

“7.1**In one case of Sh. Anup Chakraborty, who has received salary/business receipts of Rs.13,90,275/- from assessee categorically denied having provided any services to PPK News Click in lieu of receipts.....**

7.2 When the same finding was show caused to assessee, vide reply dated 26.12.2022, it has been argued by Assessee that the expenses made to this party is only 2.57% of the total expenditure.....Besides, Assessee contended that this payment to Sh. Anup Chaudhary were made pursuant to a family arrangement between him and his brother Sh. Amit Chakraborty. Assessee has claimed that the actual services were rendered by Sh. Amit Chakraborty on the account of his brother Sh. Anup Chaudhary. Assessee, contends that during FY 2020-21, Sh. Amit Chakraborty had provided administrative services to the assessee, however, the payments were made to his brother Sh. Anup Chakraborty, as per their request. And thus, assessee contends that, the expenses claimed as against payments made to Sh. Anup Chakraborty are genuine business expenses of the assessee in lieu of services rendered by Sh. Amit Chakraborty.

7.3 The facts have been perused and it is found that the argument by

Assessee is devoid of merits and is nothing more than a make-believe concocted story. The assessee has not objected to the categorical finding that Sh. Anup Chakraborty has been paid an amount of Rs.13,90,275/- without any provision of services. Then to explain the incongruency, Assessee has made this story that his brother gave services. It is not understandable that how come, payments need to be made to a completely different person. Further, it is pertinent to mention here that the assessee has even deducted Taxes at Source in the name of Sh. Anup Chakraborty and not in the name of Sh. Amit Chakraborty who has (according to the argument of the Assessee) provided services to them. Further, the circumstantial evidences also do not corroborate the argument of the assessee. The person in question is living in a metro and it is not the case of a migrant labor/poor person where the payment may be made to his family living in a remote area or inaccessible area with the perspective of access to Banking services or for some other issue. Accordingly, the argument of Assessee is rejected.....”

10. Accordingly, the writ petition is dismissed. However, this Court clarifies that the findings given by this Court are only in the context of the present writ proceedings and shall not prejudice either of the parties at the stage of the appellate proceedings.

ACTING CHIEF JUSTICE

MINI PUSHKARNA, J

NOVEMBER 29, 2023

N.Khanna