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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2129/2025

DALMIA CEMENT (NORTH EAST) LIMITED
A PUBLIC LIMITED COMPANY INCORPORATED UNDER THE COMPANIES
ACT 1956 HAVING ITS REGISTERED OFFICE AT 4TH FLOOR, ANIL PLAZA II,
ABC, GS ROAD,
GUWAHATI-781005, REPRESENTED BY ITS AUTHORISED
REPRESENTATIVE AND SR. GENERAL MANAGER, SHRI SANTOSH KUMAR
PERIWAL, AGED ABOUT 59 YEARS, S/O LATE OMPRAKASH PERIWAL, 4TH
FLOOR, ANIL PLAZA II,
ABC,GS ROAD, GUWAHATI-781005

VERSUS

THE UNION OF INDIA AND 3 ORS.
REP BY THE SECRETARY TO THE GOVT OF INDIA, MINISTRY OF FINANCE,
NEW DELHI

2:ASSESSMENT UNIT

INCOME TAX DEPARTMENT
NATIONAL FACELESS ASSESSMENT CENTRE.

3:ASSISTANT COMMISSIONER OF INCOME TAX CIR-2
GUWAHATI

AAYAKAR BHAWAN
CHRISTIANBASTI

G.S. ROAD

GUWAHATI-781005

4:PRINCIPAL COMMISSIONER OF INCOME TAX

GUWAHATI
ROOM NO. 708
AAYAKAR BHAWAN
G.S. ROAD

CHRISTIANBASTI
GUWAHATI-781005

Advocate for the Petitioner : DR. ASHOK SARAF, B SARMA,MR S J SAIKIA,MR. N N DUTTA,MR P BARUAH

Advocate for the Respondent : SC, INCOME TAX,

BEFORE
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

25.04.2025

- 1.** Heard Dr. A. Saraf, learned Senior counsel assisted by Mr. P. Baruah, learned counsel for the petitioner and Mr. S. Chetia, learned Standing counsel, Income Tax Department for the respondent Nos.2 to 4.
- 2.** WP(C) No. 2131/2025 is filed under Article 226 of the Constitution of India assailing the impugned Assessment Order dated 26.03.2025 and the consequential Demand Notice issued under Section 143(3) read with Section 144B of the Income Tax Act, 1961 for the assessment year 2022-2023.
- 3.** WP(C) No. 2129/2025 is filed challenging the follow up action of the respondents pursuant to the impugned Assessment Order dated 26.03.2025 as well as the consequential Demand Notice issued under Section 156 of the Income Tax Act, 1961 for the assessment year 2023-2024.
- 4.** The basic grievance raised in these petitions are that though the petitioner has

duly replied to the show cause notices and the contention raised against such notices, however, when the order was passed, the same is beyond the ground issued in the notices. Therefore, according to Dr. A. Saraf, learned Senior counsel for the petitioner, by the impugned action, the authority had exceeded his jurisdiction resulting in violation of the petitioner's right. Learned Senior counsel for the petitioner also submits that the impugned orders are passed in violation of principle of natural justice.

- 5.** Mr. Chetia, learned Standing counsel, Income Tax Department submits that the impugned orders are appealable orders and therefore , this Court may not entertain the present petitions.
- 6.** Considered the arguments advanced by the learned counsels for the parties.
- 7.** Both these matters require further consideration whether availability of appeal shall be a bar in a situation, where excess of jurisdiction and violation of principle of natural justice is alleged.
- 8.** Accordingly, issue notices to the respondents as well as on the interim prayer, returnable after 3 (three) weeks.
- 9.** As Mr. S. Chetia, learned Standing counsel, Income Tax Department, accepts notices on behalf of the respondent Nos. 2 to 4, no formal notice need to be issued to the aforesaid respondents.
- 10.** Petitioner shall take steps for service of notice upon the respondent No. 1 by registered post with A/D as well as by usual process within a period of 5 (five) days from today.
- 11.** Extra copies of these writ petitions in required numbers be served upon the learned Standing counsel, Income Tax Department.
- 12.** Considering the matters in their entirety, as an ad interim measure, it is provided

that no coercive action shall be taken against the petitioner in pursuance of the aforesaid impugned order dated 26.03.2025 as well as the Demand notices as recorded hereinabove. However, it is made clear that the question of maintainability for availability of appeal is kept open.

- 13.** Accordingly, list both these petitions together.

JUDGE

Comparing Assistant