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

+ LPA 652/2025, CM APPL. 66469/2025, CM APPL. 66470/2025 & CM APPL. 66471/2025

KOHINOOR EDUCATIONAL SERVICES PVT. LTD. ....Appellant

Through: Mr. Jojo Jose, Ms. Sunitha John, Mr. Nambi Ratan and Mr. Navaneeth, Advocates

versus

UNION OF INDIA & ORS. ....Respondents

Through: Ms. Ira Singh, SPC, Ms. Pinky Pawar, GP and Ms. Nandini Aggarwal, Advocate for R-1/UOI.

Mr. Ruchesh Sinha, Advocate for R-2 & 3.

Mr. Abhishek Maratha, Senior Standing Counsel and Mr. Apoorv Agarwal, Jr. SC with Ms. Nupur Sharma, Mr. Gaurav Singh and Ms. Muskaan Goel, Advocates for R-4 & 5.

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***Date of Decision: 4<sup>th</sup> November, 2025***

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA**

### **J U D G E M E N T**

#### **TUSHAR RAO GEDELA, J: (ORAL)**

1. By way of the present Letters Patent Appeal the appellant challenges the order dated 28.11.2024 passed by the learned Single Judge in W.P.(C) 15188/2024 (hereinafter referred to as "*impugned order*") dismissing the underlying writ petition on the ground that since the relevant records have been destroyed, and the statutory provisions of the Income Tax Act, 1961



(hereinafter referred to as “*the Act*”) relied upon by the petitioner, being inapplicable for a significant portion of the claim, any direction to issue the accountant certificate in Form 26A under the Act would be practically unenforceable. The underlying writ petition was also dismissed on the ground that the reliefs sought are barred by delay and laches.

2. Although the appeal itself appears to have been filed within time, the appellant has filed an application bearing CM APPL. No.66471/2025 seeking condonation of 265 days' delay in re-filing the said appeal. For the reasons stated, the application is allowed. The delay is condoned. Application stands disposed of.

3. The impugned order passed by the learned Single Judge, being concise and precise to the point, is extracted hereunder:

*“1. The present writ petition seeks a mandamus directing Respondent No.2, Executive Director (Finance) Airports Authority of India to issue Accountant Certificate (Annexure-A to the Form 26A of the Income Tax Act, 1961). This certificate pertains to payments allegedly made by the Petitioner including Royalty, Rent, and other amounts as per the License Agreement dated 3<sup>rd</sup> April 2009 to Respondent No.3- Airports Authority of India, granting the Petitioner the use of the Salem Airport for a period of five years, from 3<sup>rd</sup> April 2009 to 2<sup>nd</sup> April 2015.*

*2. The Petitioner has approached this Court seeking relief nearly a decade after the termination of the License Agreement, making the claim patently barred by delay and laches. Nonetheless, on 28<sup>th</sup> October, 2024, the counsel for Respondents No.2 and 3 had sought time to take instructions. Today, he apprised the Court of a communication from their tax department, highlighting significant challenges in complying with the Petitioner's request. It has been categorically stated that physical records for the period prior to 1<sup>st</sup> April 2013 are unavailable, having been destroyed during the 2015 floods. Without these records, AAI cannot verify whether the income corresponding to the Petitioner's payments was included in its computation of taxable income, a precondition for issuing the certificate in Form 26A under the Income Tax Act. The said communication reads as under:*

*From: TAX CHQ AAI  
Sent: 27 November 2024 10:53*



To: Law CHQ

Cc: ED Finance 1; GM(LAW),CHQ; GM Tax Cell, CHQ; Geeta Pandey; Shubham Gupta; Shivam Aggarwal; Jitendra Sharma

Subject: Fw: URGENT ACTION-WP(C) No. 15188/2024 – KOHINOOR EDUCATIONAL SERVICES PVT. LTD. VS UOI & OTH BEFORE HIGH COURT OF DELHI

Sir,

With reference to trailing email, gist of data / reply received from RHQ, SR is as under:-

- 1) No physical records for the period prior to 01.04.2013 is available at RHQ/SR as all records related prior to SAP-ERP) are all destroyed during the 2015 floods.
- 2) Prior to SAP – ERP migration (i.e. prior to 2013), RHQ/SR revenue accounting was managed through Accounting package developed by AIMS. Efforts were made to retrieve details in respect of M/s. KESPL for the period prior to 01.04.2013. However, it has been confirmed by AIMS that they are unable to retrieve any details from the package, since the records are not saved in any server.
- 3) Detail of payments, out all mentioned in writ petition, received from Kohinoor Educational services (P) Ltd., (KESPL) as verified from the AAI, RHQ/SR bank statement for the referred period

S.no	Date of Receipt	Amount	Receipt Mode	Remarks
1	03.04.2009	9,90,000.00	DD-5482	
2	03.04.2009	9,90,000.00	DD-5483	
3	03.04.2009	9,90,000.00	DD-5485	
4	03.04.2009	3,90,000.00	DD-5487	
5	03.04.2009	5,99,312.50	DD-5488	
6	03.04.2009	9,00,000.00	DD-5485	DD no. is differing with Court Schedule.
7	23.04.2009	3,46,080.00	DD-5514	
8	23.04.2009	2,78,459.00	DD-5513	
9	18.10.2010	2,00,000.00	DD-918305	
10	18.10.2010	14,52,322.00	DD-918196	Value is differing with Court schedule
11	03.09.2011	39,23,305.00	DD-351055	Value is differing with Court schedule
12	14.01.2011	47,25,000.00	DD-351046	DD no. is differing with Court schedule
13	17.03.2014	3,50,000.00	NEFT	
14	23.04.2014	1,12,943.00	NEFT	



4) *The payments indicated under sl no. 13 & 14 are received during SAP Period and it is confirmed the same has been accounted as Revenue in AAI Books in the relevant FY. Further it is to inform no TDS been deducted by the agency on these payments*

5) *Further, Form 26A is issued by Practicing Chartered Accountant (CA). It is intimated by tax consultant that in the absence of Ledger of customer in the books of AAI, it cannot be verified whether AAI has included the income in its computation of income. Due to this, certificate in Form 26A cannot be issued. (copy of same is hereby attached for reference)*

6) *Further, RHQ SR has initiated several follow-up actions towards recovery of outstanding dues from the agency proved futile. Subsequently, eviction order has been issued under AAI Act. Abandoned Assets of M/s. KESPL available in the AAI premises at Salem Airport had been auctioned through MSTC and an amount of Rs. 1,14,55,000/- had been realized and the proceeds were adjusted against the dues. Further, APD, Salem had sent request letter vide letter dated 31.01.2020 to The District Collector, Salem to proceed with recovery action towards the outstanding dues along with interest by sale of the defaulter's movable to Immovable property or by execution against the person of the defaulter in the manner provided under Revenue Recovery Act., 1890, which is still pending. Post Adjustment of disposal proceeds the dues position as on 05.10.2023 is Rs. 6,36,41,758,- excluding penal interest*

7) *Copy of emails dt of RHQ, SR are also attached for reference.*

*Regards*

*Geeta Pandey*

*Jt.GM (F & A)*

*Corporate Tax Cell, CHQ*

*Airports Authority of India*

*Rajiv Gandhi Bhawan,*

*Safdarjung Airport,*

*New Delhi-110003.*

*Phone:- 011-24632950. Extn: 2177/2159*

*3. Moreover, the Respondents have apprised the Court that the first proviso to Section 201 of the Income Tax Act, governing the issuance of such certificates, became effective only on 1<sup>st</sup> July 2012. Consequently, the financial years 2009-10 to 2012-13, which constitute the crux of the Petitioner's grievance, are not covered by the said provision. Thus, even on merits, the relief sought for that period is unsustainable.*



*4. In light of the above, considering the fact that the relevant records have been destroyed and statutory provision is inapplicable for a significant portion of the claim, any direction to issue the certificate would be practically unenforceable. That Apart, the court cannot ignore the substantial delay in approaching the Court. Petitioner's reliefs are barred by delay and laches and therefore, the Court is not inclined to entertain the present petition.*

*5. Dismissed along with pending application(s). ”*

4. The only ground urged by learned counsel appearing for the appellant is predicated on the letter dated 07.04.2025, which is a reply furnished by the Airports Authority of India, Regional Headquarters, Southern Region, Chennai Airport, Chennai (hereinafter referred to as “respondent no.3/AAI”) to a query made *vide* the RTI application dated 13.03.2025 by the appellant. Apparently, this document was never placed before the learned Single Judge having been obtained subsequent to the impugned order. The appellant neither took any steps nor made any effort to bring it to the notice of the learned Single Judge, even after having obtained the said letter. Intriguingly, although this letter has been filed along with the appeal, yet, no application seeking leave to take the same on record has been filed by the appellant.

5. Learned counsel places reliance on this document to submit that since now the respondent no.2/Executive Director (Finance) and respondent no.3/AAI has furnished details of certain payments received by them prior to 01.04.2013, they be directed to issue an accountant certificate in Form 26A under the Act.

6. These contentions were vehemently opposed by the learned counsel for respondent no.2/Executive Director (Finance) and respondent no.3/AAI by referring to Section 201 of the Act to submit that any person who is required to deduct any sum in accordance with the Act does not so deduct, then without prejudice to any other consequences, the said person would be



deemed to be an assessee in default in respect of such tax. He submits that the reliance of the appellant on the proviso to Section 201 of the Act is misplaced for the reason that the said proviso was inserted with effect from 01.07.2012, and the period of controversy or claim of the appellant pertains to a period prior thereto. In other words, he submits that so far as the default in not deducting the tax is concerned, the appellant cannot wriggle out of the fact that it would be held to be an assessee in default.

7. Mr. Abhishek Maratha, learned Standing Counsel for the Income Tax Department, reiterates the submissions made by learned counsel for respondent no.2/Executive Director (Finance) and respondent no.3/AAI, and additionally states that such issues ought to have been raised by way of an appeal against the original and jurisdictional assessing authorities. According to him, having failed to do so, the writ itself, and now the appeal, is not maintainable.

8. We have heard the learned counsel for the appellant as also the respondents.

9. We observe from the impugned order that the learned Single Judge has taken into account the provisions of Section 201 of the Act, as also its proviso, to opine that the grievance of the appellant covering the financial years 2009-10 to 2012-13, are not covered by the benefit in the proviso since it came into effect only on 01.07.2012. Thus, even on merits, the learned Single Judge did not find the relief sustainable. We too, having regard to the legal position, are unable to disagree with the reasoning of the learned Single Judge.

10. Though, none of the counsel invited our attention, however, we find from the records of the case that the Income Tax Appellate Tribunal, Indore Bench, Indore (hereinafter referred to as "*ITAT, Indore Bench*") by the order



dated 26.07.2018 on the same subject matter regarding disallowance made under Section 40(a)(ia) of the Act had disposed of the appeal bearing ITA No.338/Ind/2017 pertaining to the Assessment Year 2013-14 restoring the issue in respect of the payment claimed to have been made by the appellant and as to whether such receipts have been disclosed by payee (respondent no.3/AAI) in its return of income, by remanding the case back to the Assessing Officer for verification. The appellant has not brought to our notice any order or any proceeding as to what transpired consequent to the aforesaid order dated 26.07.2018, passed by the ITAT, Indore Bench.

11. We also note that the learned Single Judge has taken into consideration the fact that the appellant has invoked the writ jurisdiction of this Court after a substantial period of ten years had passed from the date when the alleged reason or alleged cause of action may have arisen in favour of the appellant. On that count too, we are unable to disagree with the opinion rendered by the learned Single Judge.

12. In that view of the matter and having regard to the nature of the relief sought, we are not inclined to pass any direction to the respondent no.2/Executive Director (Finance). Accordingly, the appeal being bereft of merits is dismissed. Pending applications, if any, also stand disposed of.

**TUSHAR RAO GEDELA, J**

**DEVENDRA KUMAR UPADHYAYA, CJ**

**NOVEMBER 04, 2025**

*yrj/rl*