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

% *Decision delivered on: 24.05.2023*

+ **W.P.(C) 7165/2023 & CM APPL. 27926/2023**

SUBHASH CHANDER KATHURIA

..... Petitioner

Through: Ms Kavita Jha with Mr Varun
Nagrath, Advs.

versus

INCOME TAX OFFICER & ORS.

..... Respondent

Through: Mr Gaurav Gupta, Sr. Standing
Counsel with Mr Puneet Singh and
Mr Shivendra Singh, Jr Standing
Counsels.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

CM APPL. 27926/2023

1. Allowed, subject to just exceptions.

W.P.(C) 7165/2023

2. Issue notice.

2.1 Mr Gaurav Gupta, learned senior standing counsel, accepts notice on behalf of the respondents/revenue.

3. Given the directions that we propose to pass, Mr Gupta says that he does not wish to file a counter-affidavit in the matter and he will argue the



matter based on the record presently available with the court.

3.1 Therefore, with the consent of the learned counsels for the parties, the writ petition is taken up for hearing and final disposal, at this stage itself.

4. This writ petition concerns Assessment Year (AY) 2020-21.

5. The record shows that the subject land which belonged to the petitioner was acquired by the National Highways Authority of India (NHAI) in exercise of powers conferred upon it under National Highways Act, 1956 [in short, "1956 Act"].

5.1 Concededly, the petitioner was granted compensation as well as interest on the said compensation.

6. While the petitioner's stand, at the relevant point in time, was that the compensation and interest received from the NHAI was not amenable to imposition of income tax, NHAI deducted tax at source, both *vis-à-vis* the principal amount as well as the interest.

7. Insofar as the interest is concerned, tax at source was deposited by the NHAI for the relevant period i.e. AY 2020-21. However, as regards the principal amount, initially, tax at source was not deposited for the AY in issue i.e., AY 2020-21 but for another AY.

8. NHAI, having realised that a mistake had been committed, made a course correction. The revised Form 26-AS reflects this position. [See Page 139 of the case file].

9. To be noted, insofar as the principal amount is concerned, the writ petitioner, admittedly, received Rs.8,48,84,800/-, while insofar as interest is concerned, the petitioner received Rs.22,53,517/-.

10. It is in this backdrop that the petitioner has filed an application with the Jurisdictional Assessing Officer (JAO), which is dated 18.08.2022.



11. We may also note that there is no dispute that the petitioner, while filing its return for AY 2020-21, had taken the position that the amount received as compensation and interest, was exempt from imposition of tax.

12. The said return was, concededly, processed under Section 143(1) of the Act. The record indicates that the intimation under Section 143(1) of the Act served on the petitioner is dated 08.05.2021.

12.1 *Via* this intimation, demand amounting to Rs.2,95,490/- has been raised against the petitioner, *albeit*, without giving credit for the tax deducted at source on compensation.

13. It is in this context that the following substantive prayers have been made by the petitioner in the aforementioned rectification application, which, we are told, is pending consideration:

“• To take the above on record ;

• To give credit of taxes to the tune of Rs. 84,88,480 and Rs. 2,25,352/- for the year under consideration as reflected in Form 26AS;

• To rectify the order dated 15.02.2022 deleting the outstanding demand amounting to Rs16,440 and grant a refund to the tune of Rs. 90,59,390.”

14. It is important to record that the petitioner had earlier moved a rectification application under Section 154 of the Act, which was disposed via an order dated 15.02.2022, whereby demand for the AY in issue i.e., 2020-21 was scaled down to Rs.16,440/-.

14.1 The third prayer made in the said application, which has been extracted above, is made in that context.

14.2 Although the rectification application seeks credit for tax deducted at source *vis-à-vis* interest, it appears the petitioner has already received the same (as has been noted in paragraph 6 of the application dated 18.08.2022)

15. Accordingly, this writ petition is disposed of with the directions to



JAO to render a decision on the pending rectification application dated 18.08.2022, at the earliest, though not later than six (6) weeks from the date of receipt of a copy of the instant judgment.

16. Needless to state, if the decision taken by the JAO is adverse to the interest of the petitioner, the petitioner will have liberty to take recourse to an appropriate remedy, *albeit*, as per law.

17. Consequently, the pending application shall stand closed.

18. Parties will act based on the digitally signed copy of order.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

MAY 24, 2023/RV

[Click here to check corrigendum, if any](#)