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

% **Decision delivered on: 26.09.2023**

+ **W.P.(C) 12722/2023**

INDUS TOWERS LIMITED

..... Petitioner

Through: Mr Rohit Jain, Mr Deepesh Jain, Mr
Aniket D. Agrawal and Mr Abhishek
Singhvi, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ANR.

..... Respondents

Through: Mr Gaurav Gupta, Sr. Standing
Counsel with Mr Shivendra Singh,
Mr Puneet Singhal and Ms Mahima
Garg, Advocates.

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. 50190/2023

1. Allowed, subject to just exceptions.

W.P.(C) 12722/2023

2. Issue notice.

2.1 Mr Gaurav Gupta, learned senior standing counsel, accepts notice on behalf of the respondent/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. 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. The following substantive prayers have been incorporated in the writ petition:

“a. quashing the intimation dated 01.09.2023 issued under section 245 of the Income Tax Act, 1961 (‘the Act’) by Respondent No.2 adjusting the refund due to Petitioner for assessment year 2022-23, against the (erroneous) disputed outstanding tax demand(s) for other assessments years in blatant violation of the statutory mandate; and

b. quashing the intimation dated 01.09.2023 issued under section 245 of the Act by Respondent No.2 adjusting the refund due to Petitioner for assessment year 2022-23 against the (erroneous) disputed outstanding tax demand(s) for other assessments years, more particularly against demand for assessment year 2017-18 to the extent of Rs.30,85,39,301; and

c. directing the Respondents to expeditiously grant the refund due to the Petitioner for assessment year 2022-23, more particularly and atleast to the extent of the aforesaid illegal adjustment of Rs.30,85,39,301 along with applicable interest, as per law.”

5. Mr Rohit Jain, learned counsel, who appears on behalf of the petitioner/assessee, says that the proposal communicated to the petitioner which is contained in two emails of even date i.e., 28.08.2023 indicated that the refund due to the petitioner for Assessment Year (AY) 2022-23 be adjusted against demands raised in AY 2021-22 and AY 2018-19. [See Annexures F and G].

6. The grievance of the petitioner is that contrary to the proposal, *via* the impugned order dated 01.09.2023, the respondents/revenue have adjusted demands not only for AY 2018-19, which was one of the proposals, but also for AY 2017-18.



7. In sum, it is the petitioner's case that there has been a breach of principles of natural justice inasmuch as the respondents/revenue have moved away from what was proposed in the two emails referred to hereinabove.

7.1 The infraction of principles of natural justice is also sought to be buttressed by emphasising the point that although the petitioner was given twenty-one (21) days to respond to the first of the above-captioned emails concerning adjustment qua demand concerning AY 2021-22, the impugned order was passed within four (4) days.

8. There are several other issues as well, which Mr Jain has raised before us, including the fact that the demand for AY 2022-23 has been stayed by this court vide order dated 21.08.2023 passed in W.P.(C) 11037/2023.

9. Therefore, in our view, the best way forward would be to set aside the impugned order dated 01.09.2023, with liberty given to the concerned officer to take the next steps in the matter, *albeit*, as per law.

10. The writ petition is disposed of in the aforesaid terms.

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

(RAJIV SHAKDHER)
JUDGE

(GIRISH KATHPALIA)
JUDGE

SEPTEMBER 26, 2023/v

Click here to check corrigendum, if any