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

% ***Date of Decision: 05.12.2023***

+ **W.P.(C) 2697/2022 & CM Appls.50531/2023, 61015/2023**

SYED HABEEBUR REHMAN

..... Petitioner

Through: Mr Pankaj Aggarwal with Ms Prerana
Kaushik and Ms Ayushi Ranade,
Advts.

versus

DEPUTY COMMISSIONER OF INCOME TAX

CIRCLE 28(1) & ORS.

..... Respondents

Through: Mr Abhishek Maratha, Sr. Standing
Counsel with Mr Parth Semwal,
Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

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

RAJIV SHAKDHER, J.: (ORAL)

1. The substantive prayers made in the writ petition reads as follows:

- a) *To admit the Writ Petition on merits as this Hon'ble Court has full jurisdiction to hear the same;*
- b) *That this Hon'ble Court may be pleased to issue a writ of mandamus, or any other appropriate writ, order or direction to the Respondents directing them to issue the refund of the Petitioner for the A.Y. 2010-11 & A.Y. 2014-15 aggregating to Rs. 46 lacs (approximately) alongwith the applicable interest arising out of the Income Tax Act, 1961;*
- c) *To award the cost of the instant writ petition to the Petitioner;...*

2. The record shows that notice in the writ petition was issued on



10.03.2022.

2.1 The record also shows that *via* the order dated 05.07.2023, in an application moved on behalf of the petitioner [i.e., CM Appl.33550/2023], for the reasons given in the order, the date in the main writ petition fixed, at that juncture, on 06.11.2023 was advanced to 09.08.2023.

3. Furthermore, the grievance of the petitioner was captured in the said order. For convenience, the relevant parts of the said order are set forth hereafter:

“...7. The principal grievance of the petitioner appears to be that the refund due to the petitioner for Assessment Years (AYs) 2010-11 and 2014-15 aggregating to approximately Rs.46 lakhs has been adjusted against the demand raised by the respondent/revenue qua AY 2015-16, albeit, without notice being issued him under Section 245 of the Income Tax Act, 1961 [in short, “Act”].

7.1 Furthermore, it is the petitioner’s assertion that 20% of the demand raised for AY 2015-16 stands deposited and an appeal has been filed against the assessment order concerning AY 2015-16, which is pending adjudication with the Commissioner of Income Tax (Appeals).

7.2 That said, it appears that a formal application for stay was not filed by the petitioner with the AO.

8. Given this position, the petitioner is given leave to file a formal application before the Assessing Officer (AO) setting out the facts indicated above within one (1) week from today.

8.1 If such an application is filed, the AO will rule on the said application within ten (10) days of receipt of the application.

8.2 A copy of the order will be furnished to the petitioner.

9. List the matter on 09.08.2023”

4. On the next date of hearing, i.e., 09.08.2023, the matter was posted for 22.09.2022. On 22.09.2022, since there was no representation on behalf of the petitioner, the matter was adjourned to 22.04.2024.



5. The record shows that, on behalf of the petitioner, an application was moved for seeking clarification of the order dated 05.07.2023 [i.e., CM Appl.50531/2023]. We had, thus, indicated the following in our order dated 27.09.2023:

“1. This is an application moved on behalf of the petitioner/assessee, seeking clarification of the order dated 05.07.2023.

2. Quite frankly, no clarification is required, in the sense that all that we had directed the concerned Assessing Officer (AO) to do was to decide the application for stay, in which the petitioner/assessee was given leave to refer to the facts presented before us by him.

3. To reiterate, it is the petitioner’s case that the refund amounting to Rs.46,42,955/- had been determined qua him concerning Assessment Year (AY) 2010-11 and AY 2014-15.

4. The refund amount determined for AY 2010-11 is Rs.7,08,062/-.

4.1 Likewise, for AY 2014-15, the refund determined is Rs.39,34,893/-.

5. The said amount i.e., Rs.46,42,955/- [Rs.39,34,893+ Rs.7,08,062], it appears, was adjusted against a demand raised qua AY 2015-16.

5.1 The demand raised for AY 2015-16 was Rs.81,90,033/-.

6. The petitioner/assessee claims, and it is not disputed, that 20% of Rs.81,90,033/- i.e., Rs.16,38,100/- was deposited and an appeal was filed before the Commissioner of Income Tax (Appeals) [CIT(A)].

6.1 We are told by Ms Kadambari, learned counsel, who appears on behalf of the petitioner/assessee, that the appeal filed with the CIT(A) is pending adjudication.

7. Thus, in sum, it is the petitioner’s case that since 20% of the amount against the demand outstanding for AY 2015-16 has been deposited, the rest should be refunded, which would include balance 80% of the demanded amount for AY 2015-16 and the refund of Rs.46,42,955/- for AY 2010-11 and AY 2014-15.



8. *Ms Kadambari says that the petitioner/assessee is not wanting to claim any interest on these amounts, if the amounts are paid forthwith.*

9. *Accordingly, issue notice.*

9.1 *Mr Abhhishek Maratha, learned senior standing counsel, accepts notice on behalf of the respondents/revenue.*

10. *Mr Maratha will return with instructions.*

10.1 *In case instructions are received to resist the application, a reply will be filed before the next date of hearing.*

11. *List the above-captioned application on 06.11.2023.”*

6. On the next date i.e., 06.11.2023, the matter could not be taken up for hearing as one of us [i.e., Rajiv Shakhder, J.] had to convene in a Special Bench.

7. It is in these circumstances that the said application was posted for hearing today.

8. Mr Abhishek Maratha, learned senior standing counsel, who appears on behalf of the respondents/revenue, has returned with instructions, which indicate that the respondents/revenue have computed the amount refundable to the petitioner/assessee.

8.1. It has been pointed out by Mr Maratha that Rs.44.60 lakhs has been computed as the amount which is refundable to the petitioner/assessee.

10. Mr Pankaj Aggarwal, who appears on behalf of the petitioner/assessee says that the amount claimed by way of refund is Rs.46 lakhs, as indicated in the prayers made in the writ petition.

10.2. Furthermore, Mr Aggarwal says that the petitioner/assessee should also be granted interest.

11. To be noted, in the application [i.e. CM Appl.61015/2023], interest at the rate of 18% per annum has been claimed, which is way beyond the



statutory rate of interest. As a matter of fact, at the time when the writ petition was filed, interest at the applicable rate was claimed.

11.1 Furthermore, as would be evident upon perusal of the extract of the order date 27.09.2023, in the instant writ action, counsel for the petitioner had clearly indicated that he would not be claiming interest if the amount is paid forthwith. On that date, Mr Aggarwal appeared along with Ms Kadambari on behalf of the petitioner/assessee.

12. Mr Maratha submits that since the refund due was duly adjusted, interest cannot be paid. The stand taken by Mr Maratha has injected contestation with regard to both the facts and the amount claimed as refund.

13. Given these circumstances, the writ petition is disposed of with the following directions:

(i) The respondents/revenue will remit to the petitioner/assessee the amount of refund already crystallized [i.e., Rs.44.60 lakhs] within the next two (2) weeks.

(ii) The petitioner will be at liberty to take recourse to a statutory remedy for payment of interest and the balance refund claimed by him. The order passed today or those passed on previous dates will not come in the way if such a remedy is taken recourse to.

(iii) The concerned authority will decide the matter concerning interest and the balance principal amount by the petitioned/assessee in accordance with the law.

14. Consequently, the pending applications shall stand closed.

15. For the sake of good order and record, the Registry will scan and upload the communication dated 04.12.2023 addressed by Ms Kritika Jaiswal, Deputy Commissioner of Income Tax, Circle-28(1), New Delhi to



Mr Maratha.

16. The date already fixed in the matter [i.e., 22.04.2024] shall stand cancelled.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

DECEMBER 5, 2023/pmc