2024:DHC:6902-DB

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

% ***Judgment delivered on: 03.09.2024***

\+ W.P.(C) 915/2019

HARI KISHAN SHARMA .....Petitioner

Through: Mr. Ram Kumar, Mr. Sushil Kumar and Mr. K.K.Nangia, Advocates.

versus

GOVT OF NCT OF DELHI & ANR. .....Respondents

Through: Mr. Sanjay Kumar Pathak, Standing Counsel with Ms. K.K.Kiran Pathak, Mr. Sunil Kumar Jha, Mr. M.S.Akhtar and Mr. Mayank Arora, Advocates for R-1.
Mr. Puneet Rai, SSC with Mr. Ashvini Kumar, SC and Mr. Rishabh Nangia, SC.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

YASHWANT VARMA, J. (Oral)

1. This writ petition has been preferred seeking the following reliefs:

> "a) Issue a writ of mandamus or any other appropriate writ, order, direction and set aside and quash the impugned order dated 23.10.2018 in F.No. PCIT-23/ Hari Kishan Sharma/2014-15/1192(2)(b)2018-19/917 by the Respondent No 02 for initiate refund of the amount deposited under TDS which was reflected in PAN No. AHZPS8054N for Rs. 1,68,118/-.

b) Issue a writ of mandamus or any other suitable writ, order or direction for TDS amount deducted from the enhanced compensation and allow the petitioner to file the revised ITR claiming the refund of TDS of Rs, 1,68,118/- (Rupees One Lakh Sixty Thousand One Hundred Eighteen Only) with interest @ 18% PA and damages as per award' No 14/1992-93 may be reflected in the petitioner account in Form 26A in PAN No AHZPS8054N and condone the delay in reflecting the amount in the account of the petitioner.

c) Issue a writ of mandamus or any other appropriate writ, order, direction for interest on the amount deducted till date

d) Issue any other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. The principal challenge is to the order dated 23 October 2018, pursuant to which the application of the petitioner for being permitted to submit a revised return for the **Assessment Year**[1] 2010-11 and for condoning delay in terms contemplated under Section 119 (2)(b) of the **Income Tax Act, 1961**[2] has come to be rejected.

3. Admittedly, the petitioner had duly filed his return for AY 2010-11 on 24 June 2010, offering an income of INR 5,26,580/- to tax. The said return is stated to have been processed under Section 143(1) on 27 January 2011.

4. It however appears that with respect to the compensation which had been received by the petitioner under the Land Acquisition Act, 1894, although the **Land Acquisition Collector**[3] (South) is stated to have made appropriate deductions towards tax payable on compensation, the same was not reflected in the Form 26AS of the petitioner.

5. This constrained him to approach this Court by way of a writ

[1] AY
[2] Act
[3] LAC

petition seeking an appropriate direction for the LAC (South) to accord credit of **Tax Deduction at Source**[4] amounting to INR 1,68,118/- against the total enhanced compensation of INR 18,59,239/- received in **Financial Year**[5] 2009-10.

6. The writ petition came to be disposed of by this Court on 25 October 2017 with the LAC (South) being commanded to duly examine the grievance of the petitioner- assessee and accord appropriate TDS credit. It was pursuant to our direction that the LAC (South) issued a revised Form 16A in respect of TDS which already stood deducted and which Form was issued to the petitioner on 02 December 2017. It was in the aforesaid back drop that the petitioner approached the respondent for being permitted to file a revised return for AY 2010-11.

7. The said application has come to be negated by the respondents firstly taking into consideration Circular No. 09/2015 dated 09 June 2015 and in terms of which they take the position that an application for condonation in terms of the instructions issued by the **Central Board for Direct Taxes**[6] referred to above is not liable to be entertained beyond 6 years from the end of the AY for which such an application or a claim may be made.

8. The respondents also take the position that even the writ petition had come to be preferred before this Court after an expiry of 6 years from the end of the relevant AY and consequently the petitioner was not entitled to be accorded permission to file an

[4] TDS
[5] FY
[6] CBDT

amended tax return.

9. Insofar as the last observation is concerned, the concerned authority has clearly taken a wholly untenable view and in ignorance of the fact that no Circular of the CBDT or instruction could have created any period of limitation with respect to a citizen approaching this Court and invoking its jurisdiction under Article 226 of the Constitution. This quite apart from the said authority being ignorant of the position in law that no period of limitation stands prescribed for the Court being called upon to exercise its extraordinary jurisdiction under Article 226 of the Constitution.

10. Equally untenable is the view which proceeds on the basis of the Circular dated 09 June 2015. We find ourselves unable to appreciate how a general direction which clearly pertained to and attempted to regulate the power otherwise conferred upon an **Assessing Officer**[7] to make an assessment in his discretion could have been passed.

11. We note that the determinate date which is spoken of by the respondents clearly fails to bear in consideration situations like the present where the assessee was ultimately accorded relief by a Court many years after the dispute itself had arisen. It would thus be wholly inequitable to enforce a time frame as contemplated under the Circular dated 09 June 2017 and to thus deny relief which is otherwise liable to be accorded to the assessee.

12. We note that the fact that the tax had been duly deducted by LAC (South) is not in question. For some reason which is not

[7] AO

disclosed in the impugned order, the aforesaid credit was not reflected in the Form 26AS. Clearly, therefore, the petitioner cannot be penalized for the mere reason that the Form 26AS suffered from a discrepancy.

13. We also bear in mind the clear statutory mandate of Section 199 which reflects that any deduction made by a person under Chapter XVII is liable to be treated as payment of tax on behalf of a person from whose income the deduction was made.

14. We additionally take note of sub-section (14) to Section 155 and which reads as follows:

> "**Other amendments**
>
> **155.**
>
> **xxxx xxxx xxxx**
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> (14) Where in the assessment for any previous year or in any intimation or deemed intimation under sub-section (1) of section 143 for any previous year, [credit for tax deducted or collected in accordance with the provisions of section 199 or, as the case may be, section 206C] has not been given on the ground that the certificate furnished under section 203 [or section 206C] was not filed with the return and subsequently such certificate is produced before the Assessing Officer within two years from the end of the assessment year in which such income is assessable, the Assessing Officer shall amend the order of assessment or any intimation or deemed intimation under sub-section (1) of section 143, as the case may be, and the provisions of section 154 shall, so far as may be, apply thereto:
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> **Provided** that nothing contained in this sub-section shall apply unless the income from which the tax has been deducted [or income on which the tax has been collected] has been disclosed in the return of income filed by the assessee for the relevant assessment year."

15. A reading of the aforenoted provision leads us to the inevitable conclusion that a revised return along with the tax certificate need not be furnished provided such a certificate is produced before the

Assessing Officer[8] within two years from the end of the AY. The AO as per the terms of Section 155(14) was instead required to amend the order of assessment or any intimation or deemed intimation issued under Section 143(1) of the Act.

16. The fact that the amount which had been deducted was liable to be accorded due credit, also stands fortified from a reading of Section 237 of the Act which reads as follows:

> "**Refunds**
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> **237.** If any person satisfies the [Assessing] Officer that the amount of tax paid by him or on his behalf or treated as paid by him or on his behalf for any assessment year exceeds the amount with which he is properly chargeable under this Act for that year, he shall be entitled to a refund of the excess."

17. In our considered opinion, the aforesaid position clearly envisages and caters to contingencies and situations like the present where amount of tax paid or treated as paid for and on behalf of the assessee if found to be in excess of that which is chargeable, the assessee would become entitled to claim a refund. It is in the aforesaid context that the provision enables the assessee to place its case before the AO and to provide all material particulars for its consideration so that a prayer for refund may be processed. The provision for refund and review as conferred and mandated would also be in line with the constitutional imperatives of Article 265 of the Constitution.

18. The respondents however would rest their case on Section 239 of the Act and which presently reads as follows:

> "**Form of claim for refund and limitation**

[8] AO

> **239.** (1) Every claim for refund under this Chapter shall be made [by furnishing return in accordance with the provisions of section 139].
>
> (2) [***]"

19. It becomes pertinent to note that prior to the said provision being amended by virtue of Finance (No. 2) Act 2019, sub-section (2) read as follows:-

> "(2) No such claim shall be allowed, unless it is made within the period specified hereunder, namely: -
> (a) where the claim is in respect of income which is assessable for any assessment year commencing on or before the 1st day of April, 1967, four years from the last day of such assessment year
> (b) where the claim is in respect of income which is assessable for the assessment year commencing on the first day of April, 1968, three years from the last day of the assessment year;
> (c) where the claim is in respect of income which is assessable for any other assessment year, one year from the last day of such assessment year;
> (d) where the claim is in respect of fringe benefits which are assessable for any assessment year commencing on or after the first day of April, 2006, one year from the last day of such assessment year."

20. However, and undisputedly and as things stands today that prescription would have no application bearing in mind the prerogative writ that we propose to issue. In any case, the respondents have clearly lost sight of the undisputed fact that it was only after the direction of this Court that the authority had issued a fresh certificate favouring the writ petitioner.

21. The respondents have also failed in their duty to bear in mind the mandate of Sections 204 and 205 of the Act. While Section 204 identifies the person responsible for deduction of tax, and which in this case was the LAC (South), Section 205 in unambiguous holds

that the assessee on whose account tax may have been deducted, cannot be held liable. That provision reads as follows:-

> "**Bar against direct demand on assessee.**
> **205.** Where tax is deductible at the source under [the foregoing provisions of this Chapter], the assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from that income."

22. Accordingly, and for all the aforesaid reasons, we find ourselves unable to sustain the impugned order and the stand taken by the respondents.

23. We consequently allow the instant writ petition and quash the impugned order dated 23 October 2018.

24. We direct the respondents to take on board the revised return which the petitioner may submit within a period of four weeks from today. The return may be duly placed before the concerned AO for processing the prayer for refund bearing in mind the provisions contained in Section 227 of the Act.

25. The respondents while framing the order for refund shall also bear in mind the statutory regime which applies with respect to interest in case of delayed disbursal and credit.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

SEPTEMBER 03, 2024/ib