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

\# **CNR No. DLHC010578462023**

\+ ITA 18/2024, CM APPL. 49974/2024 & CM APPL. 80548/2025

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL TAXATION -1 .....Appellant

Through: Mr. Ruchir Bhatia, SSC with Mr. Anant Mann and Mr. P. Gupta, JSCs.

versus

LATE SH. DIPANKAR MOHAN GHOSH (THROUGH LEGAL HEIR MRS. SAGARIKA GHOSH) .....Respondent

Through: Mr. Sumit Lalchandani, Mr. Utkarsha Kumar Gupta and Ms. Ananya Kapoor, Advocates.

\# **CNR No. DLHC010358382023**

\+ W.P.(C) 11971/2023 & CM APPL. 46934/2023

SAGARIKA GHOSH-LEGAL HEIR OF LATE SH. DIPANKAR MOHAN GHOSH- THROUGH HER SPA HOLDER UPENDRA NATH MARWAH .....Petitioner

Through: Mr. Sumit Lalchandani, Mr. Utkarsha Kumar Gupta and Ms. Ananya Kapoor, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE-1-3-1, INTL. TAXN & ANR. .....Respondents

Through: Mr. Ruchir Bhatia, SSC with Mr. Anant Mann and Mr. P. Gupta, JSCs.

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CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA

O R D E R

% **24.08.2026**

1. This case has a checkered history of twelve years, in which, the petitioner, widow of the assessee-late Mr. Dipankar Mohan Ghosh, despite having taken a number of legal recourses, is at crossroads with foggy paths on each sides.

2. The subject matter of dispute or litigation has been sale of a house property, which the assessee had affected *qua* which he later moved an application before the Authority of Advance Ruling (AAR); then reassessment proceedings under Section 147 of the Income Tax Act, 1961 (*hereinafter referred to as 'the Act of 1961'*) were triggered; followed by three rounds of rectification proceedings for refund, two rounds of revisionary proceedings under Section 263 of the Act of 1961; penalty proceedings under Section 271(l)(c) of the Act of 1961; three appeals before Income Tax Appellate Tribunal (*hereinafter referred to as 'the Tribunal'*) and five writ petitions and one Income Tax Appeal before this Court.

3. Present appeal being ITA No. 18/2024 is an appeal, whereby the Income Tax Department has challenged the order dated 28.06.2023 passed by the Tribunal, whereby the order of Commissioner of Income Tax, International Taxation-I, Delhi (*hereinafter referred to as 'the Commissioner'*) under Section 263 of the Act of 1961 had set aside; whereas writ petition (being W.P.(C) 11971/2023) has been filed by wife of the assessee who has called in question, the penalty order dated 28.04.2023 passed under Section 271(1)(c) and demand notice dated 28.04.2023 under

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Section 156 of the Act of 1961.

4. Though questions of law have been framed by this Court in the above appeal, on 08.01.2024, but the fact situation as it stands today is full of complexity - pursuant to the contentious order of the Commissioner, the Assessing Officer (AO) passed an assessment order dated 28.10.2022 under Section 147 of the Act of 1961, whereafter two-three rounds of rectification proceedings were undertaken. The matter then went before the CIT(A), who however dismissed the appeal vide order dated 08.07.2025 as infructuous, because the Tribunal in the meantime had set aside the order of the Commissioner which was passed under Section 263 of the Act of 1961.

5. Resultantly, the assessment order dated 28.10.2022 (subsequently rectified vide order dated 15.03.2024) passed in the petitioner's case, wherein the petitioner's income from sale of property was assessed at Rs.59,05,55,783/- stood revived or alive.

6. The petitioner's grievance against this assessment order encompasses various issues, out of which the major issue is, that the AO did not give benefit of prepaid taxes (advance tax and TDS) apart from other issues relating to merit of the valuation etc.

7. The reason for which the AO did not give credit of the prepaid taxes is, that the petitioner-assessee had not filed return of income under Section 139 of the Act of 1961 and the same came to be filed pursuant to a notice issued under Section 148 of the Act of 1961. The respondents took support of judgment of Hon'ble the Supreme Court rendered in the case of **Commissioner of Income-tax v. Sun Engineering Works (P.) Limited** reported in (1992) 198 ITR 297 to deny credit of prepaid taxes.

8. According to the assessee, the return of income was not filed as he was

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awaiting the decision of AAR.

9. Mr. Sumit Lalchandani, learned Counsel for the assessee-respondent in order to buy peace of mind and to give quietus to protracted litigation, on instructions submitted that the appeal filed by the Department be allowed and the matter be remanded to the AO to pass a fresh order, however, with a direction to give credit of the TDS amount, as getting credit of the entire tax deducted at source is, in any case, a vested statutory right of the assessee. He also prayed that a direction be issued to pay the remaining amount with applicable interest.

10. Heard learned Counsel.

11. In the present case, the assessee had *bona-fidely* filed an application before the Authority for Advance Ruling (AAR) for adjudication of the very question *qua* which the demand against him later came to be raised. The assessee was quite justified in not filing the return by the due date of filing return as he was *bona-fidely* waiting for the outcome. If the AAR would have pronounced in his favour, he was not required to file return. It is a different matter altogether that before the AAR could decide the issue the AO issued notice under Section 148 of the Act of 1961. In any case, the assessee had no intention to avoid payment of tax. That apart, a huge amount of tax had been deducted at source, so the assessee would in any case have filed the return to claim refund of the amount that was deducted more than the tax liability.

12. Be that as it may. We are of the firm view that the respondents or the Union of India cannot deny the credit of the amount of tax deducted at source or prepaid taxes of Rs.l6,58,02,551/-. Even according to the AO, the respondent-assessee is entitled for adjustment of prepaid taxes to the extent of the outstanding demand (Rs. 12,15,85,401/-), but she is not entitled to get

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refund of the balance amount of Rs. 5,15,63,080/-.

13. According to us, if the same is not refunded, it will remain with the Union of India till eternity, as it cannot be treated as Tax Revenue. The appellant-Income Tax Department has not been able to show any statutory provision or justification or plausible logic that if an assessee can claim adjustment of prepaid taxes/TDS, why he/she cannot get refund of the extra TDS/prepaid Taxes? Be that as it may, in the present case, since we have found that as assessee's application before AAR about taxability was pending and she was *bona-fidely* waiting for the determination of question about the taxability of the sole transaction, she was justified in not filing the return, we direct that the return filed by the assessee pursuant to notice under Section 148 be treated to be a return akin to a regular Return of Income.

14. So far as the Revenue's reliance on the judgment rendered in the case of **Sun Engineering** (supra) is concerned, the judgment was limited to substantive computation items that were adjudicated and concluded in a prior assessment and did not concern credit for prepaid taxes.

15. The correctness of the tax liability created against the assessee is yet to be examined, which the AO will examine after considering assessee's reply/representation.

16. In view of the concession made by Mr. Lalchandani, in para 9 of the order instant, the appeal filed by the Department is allowed and the matter is remanded back to the AO, without the substantial questions of law being answered.

17. The order of the ITAT dated 28.06.2023 so also the order dated 26.02.2018 passed by AO are set aside. The matter is restored back to the AO. The AO shall treat the Return of Income, which was filed by the petitioner on

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02.12.2015, as return under Section 139 of the Act of 1961 with a further direction to pass a fresh assessment order, while giving credit of TDS in accordance with law, of course after due verification.

18. Since order of ITAT has been set aside, the penalty order dated 28.04.2023 is also quashed and set aside. The AO shall obviously be free to take up penalty proceedings afresh, if occasion so arises.

19. The assessment order be passed within a period of two months from today and any amount of TDS or prepaid taxes remaining unutilized after payment of Tax liability or found refundable to the petitioner (widow of assessee), shall be paid within a period of two months from date of assessment order, alongwith applicable interest under Section 244A and 244A(1A) of the Act of 1961. In case, the requisite exercise, including payment of refund and interest is not made by 31.12.2026, the amount shall carry additional interest of 0.5 per cent per month from 01.01.2027.

20. In case, the AO finds any difficulty in transmitting the amount in the account of the respondents/assessee, on account of linking of PAN and Aadhar or for any other reason, he/she shall be free to move application before this Court for seeking requisite clarification/direction.

21. Both the matters stand disposed of. All the pending applications are also stand disposed of.

DINESH MEHTA, J.

RAJNEESH KUMAR GUPTA, J.

AUGUST 24, 2026/*MR*

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