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

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\+ **W.P.(C) 718/2016**

In the matter of:

STANDARD OPERATING PROCEDURE OF THE INCOME TAX DEPARTMENT ..... Petitioner

Present: Mr. Sanjay Jain, Additional Solicitor General with Mr. Rahul Chaudhary, Mr.Ruchir Bhatia, Mr. Shreshth Jain, Advocates for the Revenue.

Mr. N.P. Sahni, Advocate.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R

% **29.07.2016**

CM No. 15470 of 201

1\. This application by the Income Tax Department (Department) seeks modification of the direction issued by this Court in para 7 of its order dated 29th March 2016.

2\. Although the application seeks modification of the direction contained in para 7 of the said order, it is necessary to also extract paras 5 to 7 of the said order, which reads as under:

> "5. As regards the outstanding payments to the other panel counsel, the charts now placed before the Court indicates the dates on which some of the bills have been cleared for payment. It, however, does not indicate the dates on which the payments were actually credited to the accounts of the individual counsel through the Real Time Gross

Settlement ('RTGS') system. The Court's attention has been drawn to the Instruction dated 11th April 2012 issued by the Central Board of Direct Taxes ('CBDT'), Annexure-2 of which *inter alia* states that the bills should be scrutinised within 30 days and "deficiency or excess claim, if any, shall be communicated to the counsel within a week of such scrutiny." It is also stated therein "the scrutiny of bills should not be kept pending due to non-availability of funds." Some of the erstwhile panel counsel present in Court have informed the Court that they have not received payments against their pending bills for more than six months now. One of them stated that even the retainership amount has not been received by him for more than six months.

6. Mr. Jain states that he will have this issue again examined thoroughly and revert to the Court about the precise dates on which payments through RTGS were made into the accounts of the panel counsel in regard to the bills cleared for payment.

7. The Department will issue a fresh set of instructions specific to the issue of clearance of the bills of panel counsel. *Inter alia* it should mandate that if there is a delay beyond three working days after the clearing of the bill for payment in making actual payment through RTGS, then the Department will be liable to pay interest on the amount paid to the counsel for the period of delay at the same rate at which refunds are made to the Assessees. The instruction will further make it clear that if there is any deliberate non-compliance with of the said instructions then the interest for the period beyond three months will be recovered from the salary of the concerned officers found responsible for the lapse. The Court is constrained to issue these directions on account of the laxity of the Department in tightening the system."

3. It is now pointed out by the Department that after the bills are processed by it, they are sent to the Zonal Accounts Officer ('ZAO') for payment. The bills are checked at three levels in the office of the ZAO, i.e., Dealing Clerk, Assisting Accounts Officer and finally the Accounts Officer. It is stated that the check and verification at the ZAO's end usually takes a month. In that

view of the matter, the Department in para 7 of the application has proposed the revised time lines for scrutiny and verification of the bills and release of the payments.

4. Having heard Mr. Sanjay Jain, learned Additional Solicitor General of India, the Court is of the view that there is no ground made out for modification or recall of the Court's direction issued in para 7 of the order dated 29th March 2016. In para 5 of the Court's order, a reference was made to the instruction issued by the Central Board of Direct Taxes ('CBDT') dated 11th April 2012, setting out the time limit within which the bills should be scrutinized. If there are further steps as regards the verification of the bills at the end of the ZAO, then clearly that shall also take place within the time limit set out in the CBDT instructions. The various steps highlighted by the Department can easily be telescoped and the time period shortened if the process is streamlined and the passing of the papers from one desk to the other is made seamless through digitisation. In fact, the Department working under the Ministry of Finance should take the lead in digitisation of its entire internal process and if that is done then even thirty days' time for processing and clearing of bills may not be necessary.

5. We are in 2016 with the Government of India talking of a 'Digital India'. Perhaps the Department should be a role model for how it can operationalize this vision of a 'Digital India' by digitisation of its internal processes and cut out the needless delays in the administrative functioning of the Department. The Court, therefore, finds no reason to accede to the prayer made in this application for modification of directions issued by this Court in its order

dated 29th March 2016. The application is disposed of.

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6. The latest status report of the Department on the issue of clearance of bills of the counsel has been perused.

7. Mr. Jain states that most of the bills of Mr. N.P. Sahni, Advocate have already been paid. The issue of payment of interest on the amount of the bills that have been cleared is still outstanding. Mr Jain conveys the understanding of the Department that the guidelines that were to be formulated in terms of the Court's order on this issue would be prospective and therefore the Department would not be called upon to pay interest on the bills that have been paid to Mr. N.P. Sahni and other Standing counsel.

8. With the Court having reiterated the directions issued by it in the order dated 29th March 2016 and having dismissed the application of the Department seeking its modification, the above understanding of the Department is not tenable. The reason behind requiring payment of interest on the outstanding amount is to incentivise prompt action by the Department while at the same time compensating the counsel for delays in the settlement of bills for which delay they cannot be held responsible.

9. Accordingly, the following directions are:

(a) The Department will, without any delay, issue instructions consistent with the directions issued in para 7 of the order dated 29th March 2016 to the effect that if there is a delay beyond three working days after the clearing of the bill for payment in making actual payment through RTGS, then the Department will be liable to pay interest on the amount paid to the counsel for the period of delay at the same rate at which refunds are made to the Assessees.

(b) The instruction will further make it clear that if there is any deliberate non-compliance with the said instructions then the interest for the period beyond three months will be recovered from the salary of the concerned officers found responsible for the lapse.

(c) The Court now expects the interest amount to be paid to Mr. N.P. Sahni and other Standing counsel in compliance of the above directions within a period of six weeks from today. It is made clear that the interest would be paid from the due date till the date of actual payment. The interest will become payable without the Petitioner or its counsel having to submit any claim in that regard.

10. The Department has obtained soft copies of the paper books/records of all the cases i.e., in 3058 cases till date. Mr. Jain states that no further directions are called for in this regard.

11. In the matter of allocation/re-allocation of matters, it is reported that "all the pending cases have been allocated to the present counsel. Moreover, whenever a fresh appeal or writ is being filed, it is allocated immediately to the present counsels by the office of DCIT, High Court Cell as per the work

allocation order."

12. Mr. Sahni states that he will take up certain other outstanding issues with the Department. Mr. Sahni is at liberty to do so. It is clarified that nothing stated in the Court's present order should be construed as a expression of opinion by the Court on the merits of the above contention.

13. No further directions are called for. The Court places in record its appreciation of the assistance rendered by Mr Sanjay Jain, learned ASG and the erstwhile and present standing counsel of the Department. The petition is disposed of.

S. MURALIDHAR, J

VIBHU BAKHRU, J

JULY 29, 2016
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