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

+ W.P.(C) 329/2019 & CM APPL. 1541/2019

BHARAT SANCHAR NIGAM LIMITED Petitioner

Through: Mr.Tarun Gulati & Mr.Abhishek
Boob, Advocates

versus

UNION OF INDIA & ORS. Respondent

Through: Mr.Ashok Kumar Manchanda,
Sr.Std.Counsel

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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12.02.2019

1. The petitioner's grievance is that refund of substantial amounts towards TDS payment, is wrongly withheld. It is urged that similar action was taken for previous year [W.P.(C) 3758/2018].

2. In the present assessment order, the AO noticed that the information of the assessee reflected TDS of ₹3,68,32,97,630/-, whereas total TDS as per Form 26AS was ₹3,68,48,66,013/- i.e., which meant that the assessee had short claimed a sum of ₹15,68,383/-. The AO stated *inter alia* as follows in the impugned order:

"9.1 As per the AIR information, the assessee has disclosed TDS of Rs. 368,32,97,626/- in the ITR, while total TDS as per 26AS is Rs.3,68,48,66,013/- total Receipts as per 26AS is Rs.4080,47,69,483/-. Therefore total undisclosed TDS is at Rs.15,68,387/-. During the course of assessment proceedings

the assessee was required to furnish its explanation regarding the mismatch. The assessee vide letter filed on 16.12.2016 has stated the following:-

- *During the course of assessment proceedings for AY 2014-15, your learned predecessor has requested for justification on account of mismatch in the TDS amount as disclosed in Form 26AS (as on date) and the TDS as claimed in the return of income filed for the subject AY.*
- *In this regard, the assessee submitted a detailed justification on the difference in the amount of TDS as per Form 26AS and TDS claimed in the return of income. In brief, the following key points were submitted by the assessee before your predecessor:*
- *While preparing its tax return for the subject AY, the assessee had claimed credit for taxes deducted at source on the basis of amounts appearing in the Form 26AS as on the date of filing the return of income;*
- *All the receipts pertaining to the FY relevant to subject AY have been duly accounted for in the audited financial statements of the assessee for the subject AY;*
- *The increase in amount of TDS could be attributable to factors such as delayed deposit of taxes deducted from payments made to the assessee and consequent revision of TDS returns by the payers.*
- *However, your learned predecessor, ignoring the submissions made by the assessee, made an ad-hoc addition on account of income corresponding to the amount of difference in the TDS amount. Furthermore, no benefit on account of such difference in the amount of TDS credit was allowed to the assessee while passing the assessment order for AY 2014-15.*
- *With respect to receipts appearing in Form 26AS for the year under consideration, it is reiterated that the assessee has duly accounted for all the receipts pertaining to the year under consideration in its audited financial statements. The assessee also submits that it has claimed the credit of TDS as appearing in its Form 26AS for the year under consideration at the time of filing its return of income.*

- Accordingly, while there could be minor variations in the amount of TDS reflecting in Form 26AS at any point subsequent to the filing of the income-tax return due to factors discussed above, the assessee submits that it has duly accounted for and offered to tax all the receipts pertaining to the year under consideration a FY in its return of income. In view of the aforesaid, the assessee submits that no disallowance on account of difference in the amount of TDS as per Form 26AS and as claimed in the return of income (if any) is warranted for the year under consideration.

Without prejudice to the above, where your office wishes to take a view contrary to the above, the assessee requests your office to grant the opportunity to submit a detailed response against such addition, and further allow credit of such additional TDS (if any) to the assessee for the year under consideration.

9.2 The contentions of the assessee have been considered. It has not furnished any reconciliation/explanation for the mismatch. The particulars of the TDS claimed as well as the TDS appearing in the form 26AS are available with the assessee and the onus is on it to furnish reconciliation in respect to the mismatch. In view of the failure on the part of the assessee to furnish reconciled and complete details, I am constrained to make addition on account of income corresponding to undisclosed TDS. The same is worked out as under:-

Total TDS as per 26AS

Rs. 368,48,66,013/-

9.3 In view of the above, an amount of Rs.1,73,67,706/- is added to the total income of the assessee. However, the assessee may claim credit for the TDS on submission of complete reconciliation at subsequent stage. I am satisfied that the assessee company has furnished inaccurate particulars of income and is liable to penalty u/s 271(1)(c) of the Act. Penalty proceedings are initiated separately for filing inaccurate particulars of income.

(Addition: ₹1,73,67,706/-)”

3. It is urged on behalf of the petitioner that the impugned order is perverse because after noticing it at more than one place, that total TDS reflected in its account in terms of Form 26AS with the Income Tax Department [over which the petitioner had no control] was ₹368.48 crores (approximately) and that the petitioner had, however, short claimed to the extent of ₹15,68,383/-, the Assessing Officer in the computation chart, has credited the petitioner with no TDS at all.

4. It is submitted on behalf of the Revenue that the amount due in terms of the assessment order is under verification.

5. This Court is of the opinion that given the state of record the AO's opinion that TDS was zero, is unreasonable, if not perverse entirely. Like in the previous year [A.Y.2015-16] direction is issued to the AO to pass appropriate rectification order under Section 154 of the Income Tax Act at the earliest, preferably within three weeks from today and also take consequential action towards refunding amounts due.

6. The writ petition is disposed of in terms of the above directions.

Dasti.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

FEBRUARY 12, 2019

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