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

\+ W.P. (C) 4510/2020

M/S ANIL KUMAR ATREE (HUF) ..... Petitioner
Through: Mr. Shivankar Rao, Advocate

versus

COMMISSIONER OF INCOME TAX-18 ...... Respondent
Through: Mr. Sunil Aggarwal, Sr. Standing Counsel

% Date of Decision: 24th July, 2020

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

MANMOHAN, J: (Oral)

CM APPLs.16242-16243/2020

Allowed, subject to just exceptions.

W.P. (C) 4510/2020

1. The petition has been listed before this Bench by the Registry in view of the urgency expressed therein.

2. The same has been heard by way of video conferencing.

3. Present writ petition has been filed seeking a direction to respondent to decide the applications filed by the petitioner under Section 119(2)(b) of the Income Tax Act, 1961 for refund of income tax inadvertently paid on interest received under Section 28 of the Land Acquisition Act, 1894 for

various assessment years.

4. Learned counsel for the petitioner submits that Supreme Court in ***CIT Vs. Ghanshyam Dass HUF, (2009) 8 SCC 412*** has held that income tax is not payable on such interest received, as it is not income. He further submits that an assessee even after making payment of tax either under a misrepresentation or mistake, can claim refund on income that was not taxable.

5. Learned counsel for the petitioner states that there has been an unreasonably long delay of nearly four years in deciding the applications. He submits that non adjudication of the applications filed by the petitioner is contrary to Circular dated 9^{th} June, 2015 issued by the Central Board of Direct Taxes.

6. Issue notice.

7. Mr. Sunil Aggarwal, learned counsel accepts notice on behalf of the respondent. He states that different High Courts subsequent to the judgment of ***CIT Vs. Ghanshyam Dass HUF*** (supra) have held that tax is payable on the interest received under Section 28 of the Land Acquisition Act, under the head "income from other sources".

8. He further states that most of the applications filed by the petitioner are barred by limitation under the same Circular dated 9^{th} June, 2015, relied upon by the learned counsel for the petitioner.

9. However, keeping in view the limited prayer sought in the writ petition, the same is disposed of with a direction to the respondent to decide the applications filed by the petitioner within eight weeks in accordance with law. All the rights and contentions of the parties, including the plea of maintainability, are left open.

10. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

SANJEEV NARULA, J

JULY 24, 2020
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HIGH COURT OF DELHI