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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decision delivered on: 02.06.2021

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W.P.(C) 5013/2021 & CM No.15365/2021

GE CAPITAL EUROPEAN TREASURY SERVICES LIMITED

..... Petitioner

Through: Mr. Sachit Jolly, Ms. Disha Jham and
Mr. Rohit Garg, Advocates.

versus

COMMISSIONER OF INCOME TAX & ORS. Respondents

Through: Mr. Puneet Rai, Sr. Standing Counsel
along with Ms. Adeeba Mujahid, Jr.
Standing Counsel and Ms. Niharika
Rathore, Advs for respondent nos.1 to
3/revenue.

Mr. Ajay Monga, Adv. for R-4/HDFC
Bank.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

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[Court hearing convened *via* video-conferencing on account of COVID-19]

RAJIV SHAKDHER, J. (ORAL):

1. Via this writ petition, the substantive prayers made by the petitioner are hereunder:

“a. Writ of Mandamus or Writ, Order or Direction in the nature of Mandamus, or any other appropriate Writ, Order or Direction under Article 226/227 of the Constitution of India directing the Respondent No.1 to rectify Form-3 dated 29.01.2021 by allowing credit of tax payment of Rs.19,05,21,564/-;

b. Ad-interim direction extending the due date of deposit of the tax under the VsV Scheme, i.e., 30.04.2021, to a date falling after the date of issuance of rectified Form-3;”

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2. The writ petition came up for hearing for the first time on 27.04.2021, when we had, *inter alia*, recorded the following:

“2. The principal grievance of the petitioner-assessee appears to be the reluctance of respondent no.1 to rectify Form-3 dated 29.01.2021 filed under the provisions of the Direct Tax Vivad Se Vishwas Act, 2020 [hereafter referred to as “the 2020 Act”].

3. The petitioner-assessee seeks rectification of the said form, limited to the extent of giving credit for the tax paid qua the assessment year (“AY”) 2003-2004. The petitioner-assessee claims that in the said AY, it had paid the tax amounting to Rs.19,05,21,564/-.

4. The revenue, based on the input received at the relevant time, has taken the position that credit cannot be given for the tax paid as it relates to AY 2007-2008, which is not the relevant A.Y.

5. Mr. Sachit Jolly, who appears on behalf of the petitioner-assessee, says that respondent no.4 [i.e., HDFC bank], the remitter, has clarified that the petitioner-assessee had, in fact, paid tax for the relevant A.Y. [i.e. AY 2003-2004] and because of the digitalization process being undertaken by it, the mistake had occurred, resulting in the amount paid towards tax, being reflected, albeit erroneously, vis-a-vis AY 2007-2008.

6. In our view, this matter can be resolved if the revenue were to take proactive measures and ascertain the correct position directly from respondent no.4/HDFC Bank.

7. Issue notice to the respondents.

8. Mr. Puneet Rai, who appears on advance notice, accepts service on behalf of respondent nos. 1, 2 & 3/revenue.

8.1. On steps being taken, notice shall issue to respondent no.4/HDFC bank via all permissible modes including e-mail.

9 Mr. Rai says that he will revert with instructions. In case, instructions are received to resist the petition, a counter-affidavit will be filed before the next date of hearing.

10. List the matter on 21.05.2021.”

2.1. The matter was thereafter, listed, as indicated above, on 21.05.2021, when Mr. Puneet Rai, who appears on behalf of respondent nos.1 to 3/revenue, informed us that a communication had been sent to respondent no. 4/HDFC Bank with regard to the matter in issue.

2.2. As noted by us, in the orders dated 27.04.2021 and 21.05.2021, the petitioner was not being granted credit for tax paid, amounting to Rs.19,05,21,564/-, as respondent no.4/HDFC Bank had wrongly indicated that the said amount had been paid *qua* assessment year ('AY') 2007-08 as against AY 2003-04.

2.3. It is in these circumstances that, when the matter was taken up for hearing on 27.05.2021, respondent no.4/HDFC Bank was directed to file an affidavit in terms of the earlier order dated 21.05.2021. The record shows that, although, respondent no.4/HDFC Bank has filed an affidavit, the same has been returned under objections by the Registry.

2.4. It is, however, not disputed by Mr. Rai, counsel for respondent nos. 1 to 3/revenue and Mr. Sachit Jolly, counsel for the petitioner, that they have received a copy of the said affidavit filed on behalf of respondent no.4/HDFC Bank.

2.5. As a matter of fact, Mr. Ajay Monga, who appears on behalf of respondent no.4/HDFC Bank, has screen shared the aforesaid affidavit, dated 26.05.2021. This affidavit has been filed by Mr. Jaswinder Pal Singh, Vice-President & Head, Noida Operations, on behalf of respondent no.4/HDFC Bank.

3. For the purposes of adjudicating the controversy, that has arisen in the matter, the following averments, made by Mr. Jaswinder Pal Singh, need to be noticed:

“2. That I say that as per the records available, on 27.02.2007, the Petitioner had deposited and the bank had collected a Tax Challan from the Petitioner along with a Cheque bearing No. 776435 for a sum of Rs.19,05,21,564/- at it's Sector 14, Gurgaon branch, Haryana. Copy of the statement of account duly certified as the Bankers Books Evidence Act reflecting the debit of the aforesaid amount through the aforesaid cheque, as retrieved from the archives is annexed and marked as Annexure R4-A to the .present affidavit.

3. That thereafter as per the process, on 2.3.2007, the funds for the said challan were remitted to the Reserve Bank of India, Nagpur. Further, during the digitisation of the challan data, it appears that the details pertaining to the Assessment Year were incorrectly captured as 2007-2008 instead of 2003-2004 and accordingly, the data was reported to Online Tax Accounting System (OLTAS) portal.

4. That I further state that the original challan submitted by the Petitioner, in terms of the process, is deposited with the Zonal Accounts Office of the Income Tax Authorities, which in the present case was at Rohtak and there is no record of the physical challan in the bank records.

5. That in February 2021, the Petitioner approached the bank for clarification regarding the incorrect reporting on the OLTAS system, where after HDFC Bank had issued a communication dated 15.2.2021 to the Assessing Officer of the Income Tax Authorities inter-alia requesting it to rectify the details of the Assessment Year as 2003-2004. Copy of the letter dated 15.2.2021 is annexed with the petition at page 147 and the same is annexed with the present affidavit as an Annexure R4/B.

6. I say that the no response was received from the Income Tax department after the issuance of the aforesaid letter of 15.2.2021. However, a letter dated 13.5.2021 was received from the Deputy Commissioner, Income Tax, interalia, asking the bank to furnish the copy of the challan and certified copy of the ledger pertaining to the Petitioner's account for the relevant period i.e. 2007-2008, when the aforesaid amount was deposited. Copy of the Letter dated 13.5.2021 of the Deputy Commissioner Income Tax is annexed and marked as Annexure R4/C to the present affidavit.

7. That in response to the said communication dated 13.5.2021, the bank vide it's email dated 17.5.2021 submitted to the Income Tax department that the bank does not retain the original challan copy as the same is deposited with the Zonal Account Office of Income Tax Authorities at Rohtak. On the issue of ledger/ Statement of account, the bank submitted at that stage submitted that on account of vintage of record, the same is also not available. Copy of the email dated 17.5.2021 issued by the bank to Ms. Arti Rawat of the income tax authorities is annexed and marked as Annexure R4/D to the present affidavit.

8. That in spite of the aforesaid reply by the bank, the Income Tax Authorities vide it's letter/ communication dated 20.5.2021 again sought the same information. Copy of the said letter dated 20.5.2021 is annexed and marked as Annexure R4/E to the present affidavit...”

[Emphasis is ours]

3.1. We may also note that, respondent no.4/HDFC Bank has also placed on record, a copy of its ledger account for the relevant period, i.e., 01.02.2007 to 28.02.2007, as directed by us vide order dated 21.05.2021.

3.2. Mr. Monga, apart from relying on the aforesaid affidavit, has also drawn our attention to the transaction dated 27.02.2007 in the said ledger account, which refers to transaction no. 992758. Mr. Monga has stated that, against this transaction, a cheque bearing no. 0776435, dated 27.02.2007, was submitted by the petitioner, whereby Rs.19,05,21,564/- were debited from the account maintained by M/s RSM & Co. with respondent no.4/HDFC Bank. The said amount was evidently debited from the account of M/s RSM & Co. on behalf of the petitioner. We are informed by Mr. Jolly that, since the petitioner is a foreign company, it does not maintain bank account with the banks located in India.

3.3. We may also note that, Mr. Monga has pointed out that, a copy of the challan brought on record by the petitioner, which is dated 27.02.2007 and is appended on page 59 of the paper book, adverts to the same cheque number i.e., 776435 as also the amount in issue i.e., Rs.19,05,21,564/- i.e. the details

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which stand reflected in the aforementioned ledger account.

3.4. Pertinently, Mr. Monga also draws our attention to the fact that, the challan prepared by the petitioner refers to AY 2003-04. It is also relevant to note that, the challan appended on page 59 of the paper book, carries the number 27009, and if one were to cross-reference the same on the Tax Information Network of Income Tax Department, one would find that the same challan number is available therein as well. Although, the challan number is common, the details given, *qua* the aforementioned amount i.e. Rs.19,05,21,564/-, advert to AY 2007-08.

3.5. Mr. Rai, informs us, that the details are entered in the e-portal by the remitter, who, in this case, is respondent No.4/HDFC Bank.

4. Having regard to the aforesaid, it is quite clear and this is a common ground, amongst the counsel appearing before us, i.e. on behalf of the petitioner and respondents no. 1 to 3/revenue as well as respondent no.4/HDFC Bank, that the aforementioned amount i.e. Rs.19,05,21,564/- has been received on behalf of the petitioner, which, in turn, was remitted by respondent no. 4/HDFC bank to the Income Tax Department. Thus, the question that arises for consideration, as indicated right at the outset, is: which is the AY against which the said amount had to be adjusted?

4.1. Given the material placed before us and more importantly, the stand of respondent no.4/HDFC Bank that, it had made a mistake in adverting to AY 2007-08 instead of AY 2003-04, we are inclined to accept the version of the petitioner based on preponderance of probability as nothing has been placed before us by respondents/revenue which would have us conclude otherwise; the initial onus being discharged by the petitioner.

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4.2. Accordingly, the Assessing Officer (in short 'AO') is directed to make suitable rectification, and ensure that the amount in issue, i.e., Rs.19,05,21,564/- is shown as, having been received towards tax *qua* AY 2003-04.

4.3. It cannot but, be accepted by Mr. Rai that, once such rectification is made, as directed by us, then the prayers made in the writ petition would have to be allowed, that is, Form-3, dated 29.01.2021, would have to be rectified after taking into account, the rectification that the AO is required to make pursuant to our direction.

5. Thus, the writ petition and pending application are disposed of with a direction that, the AO will carry out the rectification, as indicated hereinabove, within ten days of receipt of a copy of the order. Once the rectification is carried out by the A.O., information, in that behalf, will be given to the petitioner as well as the designated authority constituted under the Direct Tax *Vivad se Vishwas* Act, 2020 ["2020 Act"]

5.1. The designated authority, under the 2020 Act, will, accordingly, rectify Form-3, and thereafter, take next steps in the matter as per the provisions of the 2020 Act.

5.2. Since the deadline, as presently prescribed qua the applicable provisions of the 2020 Act, expires on 30.06.2021, the AO as well as the designated authority will bear this aspect in mind.

6. The Registry is directed to place the affidavit, filed by respondent no. 4/HDFC Bank, on record, for the purposes of good order and record. In the meanwhile, Mr. Monga will e-mail the said affidavit to the Court Master, attached with this Court.

RAJIV SHAKDHER, J

TALWANT SINGH, J

JUNE 2, 2021/pmc

Click here to check corrigendum, if any

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