

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-21812-2020 (O&M)
Date of Decision: 05.07.2022

BMW India Private Limited

.... Petitioner

Versus

Deputy Commissioner of Income Tax and another Respondents

**CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Prashant Meharchandani, Advocate and
Mr. Abhivadya Sood, Advocate
for the petitioner.

Mr. T.K. Joshi, Senior Standing Counsel assisted by
Mr. Vikram Bali, Junior Standing Counsel
for the respondents.

PANKAJ JAIN, J.

Reply on behalf of respondent No.1 has been filed with the advance copy supplied to the counsel for the petitioner. The same is taken on record. Registry is directed to tag the same at appropriate place.

2. The petitioner has approached this Court by way of present writ petition under Article 226 of the Constitution of India praying for grant of writ in the nature of mandamus seeking directions to respondent No.1 to refund the amount deposited by the petitioner in compliance of the condition imposed by Income Tax Appellate Tribunal (hereinafter referred to as 'ITAT').

3. The assessee is a company incorporated under the provisions of Companies Act, 1956. For the assessment year 2009-10,

the assessee filed returned income of INR 55,62,46,132 and claimed refund of INR 8,00,03,940. The case was picked for scrutiny assessment. Draft assessment order under Section 143(3) read with Section 144C of the Income Tax Act (hereinafter referred to as 'Act') was passed on 28.02.2013 (Annexure P-3), whereby the income of the petitioner was assessed at INR 137,83,95,032. The petitioner objected to the same before Dispute Resolution Panel (DRP). DRP confirmed the additions made in the draft assessment order resulting in the final assessment order under Section 143(3) of the Act dated 18.12.2013 (Annexure P-5).

4. Petitioner impugned the aforesaid assessment order before Income Tax Appellate Tribunal (ITAT). ITAT vide order dated 07.02.2014 (Annexure P-6), stayed the assessment order under Section 143(3) of the Act subject to the petitioner depositing an amount of Rs.10 crore in two installments of Rs.5 crore each by 28.02.2014 and 31.03.2014. The petitioner complied with the order. Copies of deposit challans have been placed on record as Annexure P-7. ITAT vide order dated 21.10.2014 remanded the matter back for fresh assessment by the authorities. It needs to be noticed here that the issue with respect to the depreciation of INR 33,91,637 disallowed by the assessment authorities was not raised by the petitioner and thus was conceded by assessee.

5. As per the remand order dated 21.10.2014 (Annexure P-8), the authorities were required to pass fresh assessment by 31.03.2017. It is in these circumstances that the petitioner filed present writ petition claiming refund of Rs.10 crore after deduction of tax liability on the

admitted depreciation disallowance of INR 33,91,637. It has been asserted that the assessment proceedings having become time barred as per provisions of the Act, the petitioner is entitled for the refund.

6. The facts are not in dispute. As per reply filed on behalf of respondent No.1, it is admitted that time limit to pass the assessment order was 31.03.2017. Relevant pleadings in the written statement read as under:-

“That the Hon'ble ITAT, New Delhi in its order vide No.ITA/385/Del/2014 dated 21.10.2014 remanded back the order of the AO passed/s 143(3)/144C dated 18.12.2013 back to TPO and no order has been passed in pursuance of Hon'ble ITAT's Direction. The time limit to pass the assessment in the set aside case was 31 March, 2017. Remaining contents of this para are matter of record.”

7. The time period for passing the assessment having expired on 31.03.2017, fresh order cannot be passed in view of the statutory bar. Thus, the question that arises is, whether the authorities are entitled to retain the amount deposited by the petitioner after the time limit for passing the fresh order of assessment has expired?

8. The issue is no more *res integra*. This Hon'ble Court in ***Deep Chand Jain vs. ITO***, reported as ***(1984) 145 ITR 676*** held that:-

“With respect, I entirely concur in the view taken by Chandrakantaraj Urs, J. in *R. Gopal Ramnaryan's* case [1980] 126 ITR 369 (Kar.) to the effect that until and unless the quantum of tax is determined in accordance with the procedure laid down by law, the revenue has no right to collect the tax, and, if tax, by

way of advance tax or on self-assessment or having been deducted at source, has been paid by the petitioner, the same cannot be retained contrary to the requirements of article of the Constitution.

In the present case, admittedly, no assessment order has been passed nor any assessment order could be passed, the same having been barred by the provisions of Section 153(1)(a)(iii), which is in the following terms :

"153. (1) No order of assessment shall be made under Section 143 or Section 144 at any time after-

(a) the expiry of--.....

(iii) two years from the end of the assessment year in which the income was first assessable where such assessment year is an assessment year commencing on or after the 1st day of April, 1969; or...

with the result that there being no assessment regarding the given previous year and no assessment order specifying any given amount due from the assessee, the assessee is, therefore, not liable to pay any amount by way of tax for the given year and the amount of tax already collected from him by the revenue earlier by way of advance tax is without authority of law and its retention is in violation of the provisions of article 265 of the Constitution of India."

9. Said view has further been followed by Division Bench of this Court in the case of **Bharti Engineering Corporation vs. Union of India**, reported as **(2008) 298 ITR 400**.

10. Resultantly in light of the consistent view of this Court, the present writ petition is allowed. Respondents are directed to refund the excess amount deposited by the petitioner after deducting tax liability

qua depreciation disallowance of Rs.33,91,637 which stands admitted by the petitioner before Tribunal within 30 days from the date of receipt of certified copy of this order. The petitioner will also be entitled to statutory interest on such amount to be calculated for period starting from 01.04.2017 till the date of actual payment.

(TEJINDER SINGH DHINDSA)
JUDGE

(PANKAJ JAIN)
JUDGE

05.07.2022

Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No