



\$~25

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

%

Decision delivered on: 01.08.2023+ **W.P.(C) 51/2023****PUNJAB AND SIND BANK**

..... Petitioner

Through: Mr Salil Kapoor, Mr Sumit Lalchandani, Ms Ananya Kapoor, Mr Tarun Chanana and Mr Shivam Yadav, Advs.

versus

ADDL. COMMISSIONER OF INCOME TAX-TDS.... Respondent

Through: Mr Aseem Chawla, Sr Standing Counsel with Ms Pratishtha Choudhary and Mr Aditya Gupta, Advs.

CORAM:**HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE GIRISH KATHPALIA****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL):**

1. This matter came up before us for the first time on 05.01.2023, when after hearing learned counsel for the parties, we had, broadly, etched out the controversy in the matter. For the sake of convenience, the relevant part of the said order is extracted hereafter :

“2. Mr Salil Kapoor, who appears on behalf of the petitioner, says that the law with respect to deduction of tax at source, with regard to payments made to local authorities, including New Okhla Industrial Development Authority [in short, “NOIDA ”], stands settled.

2.1 For this purpose, he has drawn our attention to the judgment dated 02.07.2018 passed by the Supreme Court in **Commissioner of Income Tax (TDS) Kanpur and Anr. vs Canara Bank**, (2018) 9 SCC 322.

2.2 Mr Kapoor submitted that amongst the appeals in which the aforesaid



decision was rendered, included an appeal filed on behalf of the petitioner-bank i.e., CA No.6065/2018.

2.3 Mr Kapoor also informs us that the said appeal concerned Assessment Year (AY) 2011-12.

3. Insofar as the instant writ petition is concerned, although the issue is the same, it relates to AY 2005-06.

4. It is in this context that the petitioner-bank has now woken up from its slumber and sought to assail the order dated 28.02.2013 passed under Section 201(1)/201(1A) of the Income Tax Act, 1961 [in short, "the Act"].

5. We may also note that insofar as the AY in issue is concerned i.e., AY 2005-06, an order dated 30.03.2013 was passed under Section 154 of the Act, whereby the original demand raised against the petitioner-bank amounting to Rs.1,36,04,250/- was reduced to Rs.50,89,894/-. The petitioner-bank, it appears, did not seek even the enforcement of this order for all these years.

6. Although the petitioner-bank has slept over its rights, we are prima facie of the view that since public money is involved, and because both the petitioner-bank and the NOIDA fall in the category of entities which deal with public funds, the respondents/revenue could consider repaying the money to the petitioner-bank for onward transmission to NOIDA.

7. We may note that the NOIDA has been following up the matter, despite which, the petitioner-bank did not act with alacrity. Given this position, NOIDA may have a case for recovering the interest from petitioner-bank if we were to grant the relief, as sought in the writ petition.

8. However, insofar as this writ action is concerned, our remit is limited to the relief sought by the petitioner-bank, which as noted above, is for issuance of a direction to quash the order dated 28.02.2013."

2. Thereafter, the matter was taken up on 27.01.2023, when further time was sought on behalf of the respondent/revenue, to take instructions in the matter.

2.1 A request for accommodation was once again made on behalf of the respondent/revenue on 13.04.2023.

3. Mr Aseem Chawla, learned senior standing counsel, who appears on behalf of the respondent/revenue, says that he has been assigned the matter recently, and that he will argue the matter based on the record present available to the court.

3.1 In other words, according to Mr Chawla, counter-affidavit on facts



will not add anything to the matter.

3.2 It is Mr Chawla's contention that the petitioner bank approached this court after an enormous delay, something that we have already observed on 05.01.2023 and, therefore, is guilty of delay and laches.

4. Mr Salil Kapoor, who appears on behalf of the petitioner bank, informs us that the petitioner bank was a party to the judgment rendered by the Supreme Court in ***Commissioner of Income Tax (TDS) Kanpur and Anr. vs Canara Bank***, (2018) 9 SCC 322.

5. It is Mr Kapoor's contention that the judgment dealt with a bunch of matters, including the petitioner bank's action.

5.1 Furthermore, Mr Kapoor says that in that bunch, the petitioner bank had agitated the very same issue, albeit *qua* AY 2011-12. This aspect has already been noted by us, as would be evident from the extract set forth, i.e., paragraphs 2.2 and 2.3, of the order dated 05.01.2023.

6. Mr Chawla, however, *qua* the legal issue, (which is that the petitioner bank was not required to deduct tax at source on payments towards interest made to NOIDA with regard to fixed deposits created by them), cannot but accept that the issue is covered against the respondent/revenue, in view of the decision of the Supreme Court in ***Commissioner of Income Tax (TDS) Kanpur and Anr. vs Canara Bank***.

6.1 Therefore, insofar as the instant writ action is concerned, the entire defence of the respondent/revenue is founded on delay and laches.

7. We would have perhaps accepted this plea, advanced by Mr Chawla, had it not been the case that the entity which is out of pocket (i.e., NOIDA) is an instrumentality of the State, and in a sense, is blameless.

8. It is the petitioner bank who procrastinated the matter and thus



delayed initiation of an appropriate legal remedy.

9. The record shows that NOIDA was relentlessly following the matter with the petitioner bank for remedial action. What compounded the injury insofar as NOIDA was concerned, is that the petitioner bank took no corrective measures to retrieve at least a part of the amount, once order dated 30.03.2013 was passed on its application under Section 154 of the Act, whereby the demand was reduced from Rs.1,36,04,250/- to Rs.50,89,894/-.

10. Furthermore, according to us, insofar as the respondent/revenue is concerned, the retention of the amount from the point of view of NOIDA, is contrary to the provisions of Article 265 of the Constitution.

11. If we allow the respondent/revenue to retain the money, it would, in effect, amount to putting the court's imprimatur, on the respondent/revenue's act of levying and/or collecting tax, without the authority of law.

12. In our opinion, in this particular case, having regard to the fact that public funds are involved, law and justice should meld. Therefore, we are inclined to quash the order dated 28.02.2013 passed under Section 201(1)/201(1A) read with Section 194A of the Income Tax Act, 1961 [in short, "Act"]. It is ordered accordingly.

13. The respondent/revenue will refund the amount deposited by the petitioner bank, i.e., Rs.1,36,04,250/-, within three (3) weeks of receipt of a copy of this judgement.

14. As indicated in the order dated 05.01.2023, NOIDA may have a case for recovery of compensatory interest from the petitioner bank, for the injury caused to it. Therefore, the order passed today will be dispatched by the Registry to NOIDA, at the following address: New Okhla Industrial



Development Authority, Main Administrative Building, Sector-6, Noida, Dist. 7, Gautam Budh Nagar-201301.

16. The petitioner bank will also ensure that a copy of the judgment rendered today is placed before the concerned officer dealing with the matter in NOIDA.

17. NOIDA will be at liberty to take recourse to an appropriate remedy, as it deems fit, for recovering the compensatory interest from the petitioner bank, as per law.

18. Furthermore, the petitioner bank will deposit Rs.50,000/- towards costs, with the Juvenile Justice Fund.

19. The writ petition is disposed of, in the aforesaid terms.

20. Parties will act based on the digitally signed copy of the judgment.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

AUGUST 1, 2023

aj

Click here to check corrigendum, if any