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

\+ W.P.(C) 1985/2022 & C.M.No.5715/2022

MRS.ANJUL ..... Petitioner

Through: Mr.Arjunt Pant, Advocate.

versus

OFFICE OF PRINCIPAL COMMISSIONER OF INCOME TAX-12, & ORS. ..... Respondents

Through: Mr.Sanjay Kumar, Sr.Standing Counsel for the Revenue.

% Date of Decision: 23rd August, 2022

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, J (Oral):

1. Present writ petition has been filed seeking refund of Rs.16,00,51,690/- for the assessment year 2010-11 and Rs.1,17,03,678/- for the assessment year 2011-12 as determined by the respondents on 05th April, 2021 under the Direct Tax Vivad Se Vishwas Act, 2020 ('VSV Act). Petitioner also seeks payment of interest @ 9% per annum on delayed payment from the date of adjudication till the date of payment.

2. Admittedly, the petitioner was granted final certificate in Form-5 dated 05th April, 2021 under VSV Act setting forth the particulars of the taxes refundable towards the full and final settlement of tax arrears. Though the due amount has been refunded to the petitioner during the pendency of

the present proceedings, the petitioner seeks payment of interest on account of delay in payment.

3. Learned counsel for the petitioner states that payment of interest is a kind of compensation for use and retention of the money collected unauthorisedly by the Department. In support of his submission, he relies upon the judgment of the Supreme Court in ***Union of India vs. Tata Chemicals Limited, (2014) 6 SCC 335***.

4. *Per contra*, learned counsel for the respondents-revenue states that no interest is payable on refunds determined/issued under VSV Act.

5. He also states that there was delay in issuing the refund as the deceased assessee was having two PAN numbers, which required deletion/deactivation of one PAN number.

6. He further states that No objection Affidavit of the surviving legal heir was furnished on 01st September, 2021 and, therefore, the period of six months delay is entirely attributable to the petitioner alone.

7. He lastly states that refund amount could not be processed earlier as there was technical issue at the Central Processing Centre ('CPC') and only once the same was resolved, refund was issued.

8. Having heard learned counsel for the parties, this Court is of the view that refund due and payable to the assessee is a debt-owed and payable by the revenue. There is no provision in the VSV Act prohibiting award of interest on delayed refund. Consequently, this Court is of the opinion that the VSV Act does not authorise the respondent to either delay or withhold the payment of the refund.

9. As far as the issue of deceased assessee having two PAN numbers is concerned, this Court finds that the petitioner had initially filed a writ

petition being W.P.(C) No.972/2021 as the petitioner's application for refund was not being entertained on the ground that the deceased assessee had two PAN numbers. However, learned predecessor Division Bench of this Court vide order dated 25th January, 2021 resolved the said issue by directing the respondents to entertain the petitioner's application for refund on one of the two PAN numbers. Consequently, the said issue had been resolved prior to the issuance of the final certificate determining the refund amount.

10. Further, in pursuance to the final certificate, the respondents asked for a No objection Affidavit from the surviving legal heirs on 31st August, 2021, which was furnished on the next day i.e. 01st September, 2021. Consequently, this Court is of the view that there was no delay in furnishing the No Objection Affidavit of the other surviving legal heir.

11. As far as the technical issue at CPC is concerned, this Court is of the view that the same cannot enure to the benefit of the Tax Department.

12. Moreover, as held by the Supreme Court in ***Tata Chemicals Limited*** (supra), the State having received the money without right and having retained and used it, is bound to make the party good, just as an individual would be under like circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest. Consequently, this Court is of the view that the petitioner is entitled to interest on the refund amount which was delayed beyond the period of ninety (90) days from the date of determination of the refund amount i.e. 05th April, 2021.

13. Keeping in view the aforesaid, it is directed that the respondents-revenue shall make payment of simple interest @ 5% per annum on delayed

refund amount w.e.f. 05th July, 2021i.e. beyond the period of ninety (90) days from the date of determination of the refund amount on 05th April, 2021 till date of payment i.e. 11th February, 2022. Let the said payment be made within eight weeks.

14. With the aforesaid directions, present writ petition along with pending application stands disposed of.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

AUGUST 23, 2022
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