

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20009 of 2021

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Alkem Laboratories Limited, a Limited Company incorporated under the Companies Act, 1956, having its office at Exhibition Road, Patna G.P.O., P.S. Gandhi Maidan in the town and District of Patna through its Regional Director, Ashok Kumar, son of Late Lalan Kumar Singh aged about 57, resident of F- 145, P.C. Colony, Kankarbagh, Patna- 800020 PO and PS-Kankarbagh, District- Patna.

... .. Petitioner/s

Versus

1. The Commissioner of Income Tax (TDS), Bihar Central Revenue Building (Annexe), Beer Chand Patel Marg, Patna.
2. The Joint/ Additional Commissioner of Income Tax TDS Range, Central Revenue Building (Annexe), Beer Chand Patel Marg, Patna.
3. The Assistant Commissioner of Income Tax (TDS), Patna, Central Revenue Building (Annexe), Beer Chand Patel Marg, Patna.
4. CPC (TDS), Aaykar Bhawan, Sector- 3, Vaishali, Ghaziabad- 201010 (UP).

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Rastogi, Sr. Advocate Ms. Smriti Singh, Advocate Mr. Parijat Saurav, Advocate
For the Respondent/s	:	Mrs. Archana Sinha, Sr. Standing Counsel of Income Tax Department Mr. Alok Shahi, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)



Date : 18-08-2023

1. Whether the amendments made to the Income Tax Act, 1961 and the circular issued regulating the period in which a Refund Application is to be filed would result in the frustration of the claim of refund made by the assessee, is the question raised in the writ petition.

2. The assessee, the petitioner herein, is concerned with the demand made for various years and the refund for the Assessment Year 2010-11 relatable to the Financial Year 2009-10.

3. Shri Ajay Kumar Rastogi, learned Senior Counsel specifically referred to Section 200A of the Income Tax Act which was brought into the statute as on 01.04.2010; which provided a specific period for processing of statements of tax deducted at source; which is till the expiry of one year, from the end of the financial year in which the statement is filed. The statement of the TDS deducted in the financial year 2009-10, was filed by the assessee in the year 2010-11 and hence the department could have sent an intimation on or before 31.03.2011. No such intimation was sent and later on the assessee was informed of a demand of Rs. 19.29 lakhs for the various assessment years starting from 2007-08 to 2021-22 as



seen from Annexure-7 series; intimation of outstanding demand. The assessee even now, despite the date for sending an intimation under Section 200A having expired only prays for setting off the demand as against the refund claim which is permissible under Section 245 of the Act. It is submitted that as of now the department requires that Form 26B has to be filed, which Form was introduced only under sub-rule (3A) of Rule 31-A of the Income Tax Rules, effective from 19.02.2013. In fact, there was no such rule prescribed or the filing of a form mandated any time before 2013 and not at all for the relevant assessment year 2010-11. The circular of the department wherein a specific time has been prescribed to file an application for refund making a claim of refund, as produced at Annexure-B in the supplementary counter affidavit filed by the respondents is alleged to be in contravention of the statutory provision.

4. The learned Senior Counsel refers to *Karimtharuvi Tea Estate Ltd. v. State of Kerala; (1966) 60 ITR 262 (SC)* to urge that any amendment brought out to the Income Tax Act as on the 1st of April of a financial year would apply to the assessments for that year and any amendment brought in after the first day of April would not apply to the assessment carried



out in that year, even if the assessment is made after the amendment came into force. Hence, the amendment made on the first day of April of any financial year applies to the assessment of the prior financial year also, which would be carried out in the financial year in which the amendment is enforced as on 1st of April. ***Kerala Financial Corporation & Others v. CIT; (1994) 210 ITR 129 (SC)*** is relied on to contend that a circular issued under Section 119 cannot be one detracting from the provisions of the Act and also cannot override the provisions of the Act. Reliance is also placed on ***CIT v. Hero Cycle Pvt. Ltd.; (1997) 228 ITR 463 (SC)*** to put forth the well healed proposition that circulars though binding on the department officials, it would not bind the appellate authorities, the Tribunal, the Courts or even the assessee itself.

5. Mrs. Archana Sinha, learned Senior Standing Counsel appearing for the Income Tax Department asserts that the circular, Annexure-B is applicable to the case of the assessee and a refund claim ought to have been made within two years from the end of the financial year in which the return was filed; which expired on 31.03.2012. It was long after, in 2015 that the claim was raised. It is argued that Section 200A is not applicable to the assessee; especially relying on the explanatory note,



annexed along with the supplementary counter affidavit which, by clause 7.4 specifies that the amendment has been made applicable with retrospective effect from 01.04.2009 and will accordingly apply in relation to the Assessment Year 2011-12 and subsequent assessment years. The learned Senior Standing Counsel also relies on Paragraphs 4 and 5 of the counter affidavit, to further buttress the above contention of inapplicability of Section 200A for the relevant year.

6. After giving our thoughtful consideration to the arguments raised, the records and the provisions pointed out, we are of the opinion that the applicability of Section 200A need not be dealt with at all; for it being irrelevant to decide the issue. Section 200A speaks of processing of statements of tax deducted at source. It delineates the process by which the statement of tax deducted at source, filed under Section 200A, has to be processed and speaks of an intimation to be sent to the deductor as per clause (e). Clause (f) of Section 200A (1) also mandates that the amount of refund to the deductor in pursuance of such determination under clause (d), shall be granted to the deductor. It is the proviso which mandates the intimation to be sent within one year from the end of the financial year in which the statement is filed. In fact, this is the limitation on the



department's right to send an intimation on expiry of the same; which provision cannot frustrate the claim of a valid refund applicable to the assessee. If, as submitted by the Revenue, Section 200A is not applicable to the relevant year, there is nothing preventing the Assessing Officer from processing the statement filed under Section 200 and allowing the refund; on a request made by the assessee. The very procedure for processing of statement of tax deducted at source and an intimation along with a refund, without even a claim from the assessee is brought in under Section 200A. In that circumstance, the amounts capable of being refunded could also be adjusted as against the demand raised, which is far lesser.

7. In so far as sub-rule (3A) of Rule 31A is concerned, admittedly, the same was brought in only on 19.02.2013 along with Form 26B. The assessee even now is ready to file an application under Form 26B; however, the department asserts that such an application cannot be filed without first satisfying the demand made under Annexure-7 series. The assessee on the other hand submits that when far more amounts are due from the department to the assessee, the department could enable filing of Form 26B so that the refund can be processed and the demands set off along with any interest payable to the



department from the refunded amounts. The only rider would be in so far as the department also being made liable to pay the interest due on the refund.

8. Annexure-B is a circular issued by the Board which as has been declared in the cited decisions is not binding on this Court or even the assessee. There can be no prescription of a limitation period in the circular, which is not available in the statute or the rules framed thereunder.

9. In the totality of the circumstances, we are of the opinion that the entire problem could be resolved if the department avails of the provision under Section 245 of the Income Tax Act. Having found that there is no limitation for making a claim of refund; even now the assessee could make an application and when the refund is processed there can be a set off made of the amounts remaining due from the assessee for the various assessment years, from the amounts directed to be refunded. On the above reasoning, we direct the department to either enable filing of Form 26B or in the alternative permit the assessee to make a claim for refund in the physical mode which shall be considered on the basis of the statement made under Section 200 regarding the tax deducted at source. The refund being processed and permitted, the department should set off the



amounts due as evident from the demand raised for the various assessment years from 2007-08 to 2021-22 as per Annexure-7 series.

10. The writ petition is allowed with the above directions.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

P.K.P./-

AFR/NAFR	
CAV DATE	
Uploading Date	21.08.2023
Transmission Date	

