IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2023

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.20535 of 2021 and
W.M.P. Nos.21775 and 21776 of 2021

Estate of VS Tyagaraja Mudaliar,
No.68, Chamiers Road, R.A.Puram,
Chennai 600 028.
Rep. by its Executor
Mr.V.T.Somasundaram .. Petitioner

Vs.

1. The Chief Commissioner of Income Tax (OSD)
O/o Principal Commissioner of Income Tax - 1, Chennai,
Aayakar Bhawan, 121, Nungambakkam High Road,
Chennai 600 034.

2. The Assessing Officer,
Non Corp Ward 2(5)
Aayakar Bhawan,
121, Nungambakkam High Road,
Chennai 600 034. ..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the 1st Respondent in his proceedings leading to the passing of the order vide C.No.217/U/S.264/PCIT-1/2020-21 dated 12.02.2021 quash the same and further direct the Respondents to allow the claim of the TDS deducted on the fixed deposits.

For Petitioner : Mr.S.Sathiyanarayanan

For Respondents : Mr.B.Ramanakumar

ORDER

The present writ petition is filed challenging the proceedings of the 1st Respondent dated 12.02.2021 insofar as it denies giving credit of the TDS to the petitioner on the premise that the TDS was not deducted in the name of the assessee but instead in the names of Mrs.Neelothpalambal and Shri V.T.Somasundaram, the erstwhile executors of the estate of Shri V.S.Tyagaraja Mudaliar.

2. It is submitted by both the learned counsel for the petitioner and respondent in unison that the issue that arises for consideration in this writ petition stands covered by the order of this Court in W.P.No.9723 of 2020 dated 16.03.2023. The aforesaid order is extracted hereunder:

> *"The petitioner is the Estate of Mr.V.S.TyagarajaMudaliar. The request for quash of order dated 08.05.2020 emanates from the non~grant of credit of the tax deducted at source (TDS) under the provisions of the Income tax Act 1961 (Act), in respect of certain fixed deposits. The estate of V.S.Tyagaraja Mudaliar was allotted PAN No.AAAAE0156C by the Income Tax Department.*
>
> *2.Since the State Bank of India, R.A.Puram did not allow the opening of an account in the name of an Estate, the accounts, including fixed deposits of the Estate were held in joint names of the Executors, then Mrs.Neelothpalambal and Mr.V.T.Somasundaram. With the demise of Smt.Neelothpalambal in 2011, Mr.V.T.Somasundaram became the sole executor of the petitioner.*
>
> *3.As a consistent practice, it is the Estate that has been offering to tax the income from the fixed deposits and this position is stated to continue till date. For the assessment years (AY) upto 2008-09 the claim of the Estate for credit of TDS, though TDS certificates were in the name*

of the individual executor, was accepted.

4.While so, for the period from 2009-10 to 2013-14, the request of the petitioner for credit was denied on the ground that there was a mismatch between the PAN numbers when compared with Form 26AS. An intimation was issued for the aforesaid assessment years under the provisions of Section 143(1) of the Income Tax Act denying TDS claim. Petitions for rectification under Section 154 were filed accompanied by indemnity bonds to the effect that the claim for TDS was made only on one account and any subsequent claim for such credit by the individual would be indemnified.

5.It is the case of the petitioner that no effective orders were passed in the petitions filed in Section 154. Thus, the petitioner filed petition under Section 264 on 27.12.2018 that has come to be rejected on 08.05.2020 by the Principal Commissioner of Income Tax. The sole reason for the rejection is that, upon verification from the computer operator section, it was ascertained that the tax deducted under one PAN cannot be given credit in another PAN, even if it is the assessee holding the latter PAN that had offered the corresponding income to tax.

6.The conclusion as above is patently erroneous both in light of Rule 37BA(2) of the Income Tax Rules, 1962 as well as bearing in mind proper and fair norms of assessment, Rule 37BA (1) and (2) along with the proviso read as follows:

"37BA. (1) Credit for tax deducted at source and paid to the Central Government in accordance with the provisions of Chapter XVII, shall be given to the person to whom payment has been made or credit has been given (hereinafter referred to as deductee) on the basis of information relating to deduction of tax furnished by the deductor to the income~tax authority or the person authorised by such authority.

(2) [(i) Where under any provisions of the Act, the whole or any part of the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit for the whole or any part of the tax deducted at source, as the case may be, shall be given to the other person and not to the deductee:

Provided that the deductee files a declaration with the deductor and the deductor reports the tax deduction in the name of the other person in the information relating to deduction of tax referred to in sub-rule (1).]"

7.Thus, legislature has taken note of a situation where it is possible that income is offered to tax in one hand whereas tax is deducted (PAN 1) and given credit to in the hand of an alternate *assessee (PAN 2). In such an event, a reconciliation is possible in light of the proviso to Rule 37BA(2) that provides for a Declaration to be made in this regard confirming that no double deduction has been made by both the assessees. Even in the absence of such a Rule it stands to reason that credit must be offered to the person offering the income to tax subject of course to a verification that there is no double claim of credit.*

8.In light of the discussion as above, the impugned order is set aside. The application of the petitioner under Section 264 stands restored to the file of the Commissioner of Income Tax and the same shall be decided within a period of six (6) weeks from date of receipt of the order, after hearing the petitioner. The CIT shall, in line with the observations and conclusions in this order, grant credit of TDS after effecting a verification that there is no double claim in that regard, one by the Trust and the other by the individual.

9.This writ petition is allowed in terms of the above order. No costs. Connected miscellaneous petition is closed."

3. In view of the above submission, the writ petition is disposed of in terms of W.P.No.9723 of 2020 dated 16.03.2023. No Costs. Consequently, connected miscellaneous petitions are closed.

15.12.2023

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
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To:

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   O/o Principal Commissioner of Income Tax - 1, Chennai,
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MOHAMMED SHAFFIQ, J.

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