IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2023

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

W.P.Nos.26393 and 26397 of 2022
and
W.M.P.No.25487 of 2022

Mr.Sathiagu Uadayar Sebastin ... Petitioner in both W.Ps.

Vs

1. Centralized Processing Centre,
   Bengaluru,
   Karnataka – 560 100.

2. Income Tax Officer,
   Non Corporate Ward 15(4),
   Room No.207, 2nd Floor,
   Aayakar Bhawan, Wanaparthy Building,
   121, N.H.Road, Nungambakkam,
   Chennai – 600 034.

3. CIT(Appeals) (Commissioner of Income Tax),
   Room No.223, 2nd Floor,
   Aayakar Bhawan, Main Building,
   121, Mahatma Gandhi Road,
   Chennai – 600 034.

4. Commissioner of Income Tax (Appeals)
National Faceless Appeal Centre ... Respondents in both W.Ps.

Prayer in W.P.No.26393 of 2022: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, to direct the first respondent/2nd respondent to refund the amount of Rs.19,19,901/- along with interest, adjusted towards the outstanding demand for the impugned **AY 2012-2013**.

Prayer in W.P.No.26397 of 2022: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records in PAN: AANPS0246D on the file of the Respondents and quash the impugned intimation dated 31.08.2016 issued by the first respondent u/s. 245 of Income Tax Act, 1961 in Communication Reference No.CPC/1516/G8/1539341479 for the AY 2015-16 and the consequential impugned communication dated 18.08.2022 issued by the second respondent through email for the **AY 2012-13** as illegal, arbitrary and against the settled principles of law.

For Petitioner : M/s.Vandana Vyas
(in both W.Ps.)

For Respondents : Mrs.S.Premalatha
Junior Standing Counsel
for Mr.R.S.Balaji
Senior Standing Counsel
(in both W.Ps.)

COMMON ORDER

By this common order both the Writ Petitions are being disposed of.

2. The petitioner has filed the Writ Petition in W.P.No.26393 of 2022 for a mandamus to direct the first and second respondents to refund a sum of Rs.19,99,901/- which has been appropriated by the respondent on 12.11.2016 by adjusting the aforesaid amount towards the refund payable to the petitioner for the Assessment Year 2015-2016.

3. The records that have been filed before this Court indicate that the petitioner had suffered adverse Assessment Order for the Assessment year 2012-2013 on 29.03.2016. The petitioner preferred an appeal in ITA.No.74/CIT (A)-15/2016-17 on 22.04.2016. Meanwhile, a stay was also ordered by the second respondent herein viz., the Jurisdiction Assessing Officer on 08.11.2016.

4. Meanwhile, the appeal has been transferred to the National Faceless Appeal Centre (NFAC) and has been acknowledged as DIN:ITBA/NFAC/F/APL_1/2021-22/1034054944(1).

5. The specific case of the petitioner is that the petitioner has complied with the said order as was required as per the circular that were prevailing and therefore there is no justification in adjusting the amount that was to be paid to the petitioner against the amount that was refundable for the Assessment Year 2015-2016.

6. The learned Junior Standing Counsel for the respondent on the other hand would submit that there is no merits in the present writ petition.

7. He submits that as per the intimation issued on 31.08.2016 for the Assessment Year 2015-2016 under Section 245 of the Income Tax Act, 1961, the petitioner has been asked to follow the following steps:-

> "*In case you do not agree/partly agree to the demand, please follow the steps given below:*
>
> (a) *If the demand uploaded by Assessing Officer (A.O) you may furnish your response and reason for disagreement to the jurisdictional Assessing Officer. To know the details of Your jurisdictional AO please log on to https://incometaxindiaefiling.gov.in and click on ""Know Your Jurisdictional AO"" under Services menu.*
>
> *(b) If the demand is uploaded by CPC: You can file a revised return/rectification request through e-filing website.*
>
> *If no action taken by you within 30 days of this notice u/s.245, the outstanding demand as on that date will be considered for adjustment against your refund. Even though they have mentioned 30 days time in the intimation they have adjusted only on 12.11.2016.*

8. If no steps were taken by the petitioner within a period of thirty days (30) from the date of the notice, the outstanding settlement as on date was to be considered for adjustment against the refund. Hence, the amount has been adjusted against the refund.

9. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Junior Standing Counsel for the respondents.

10. There is no justification in appropriating the amount /adjusting the amount against the refund due against the petitioner for the Assessment Year 2015-2016 particularly after the petitioner had obtained an order of stay on 08.11.2016 in accordance with the requirements that were prevailing circular during the material time.

11. Under these circumstances, I direct the respondents to refund the aforesaid amount of Rs.19,99,901/- adjusted against the refund for the year 2015-2016 on 12.11.2016 to the petitioner within a period of four (4) weeks from the date of receipt of a copy of this order. Meanwhile, the Appellate Commissioner, the National Faceless Appeal Centre, New Delhi shall dispose of the petitioner's appeal in Appeal No:CIT (A), Chennai – 15/10780/2016-17 for the Assessment year 2012-2013 as expeditiously as possible within a period of six (6) months from the date of receipt of a copy of this order.

12. The Writ Petition in W.P.No.26393 of 2022 stands allowed in terms of the above observations and directions. Subsequently, the Writ Petition in W.P.No.26397 of 2022 also stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

31.07.2023

Neutral Citation: Yes/No
Speaking/Non-Speaking Order
rgm

C.SARAVANAN, J.

rgm

To

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   Karnataka – 560 100.

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