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

% *Date of Decision: 18.01.2023*

+ **W.P.(C) 11754/2019**

G.K. CHOKSI AND CO.

..... Petitioner

Through: Mr Arvind Kumar with Ms Devina
Sharma, Advocates.

versus

THE PRINCIPAL COMMISSIONER OF INCOME TAX,
CENTRAL -3 & ANR.

..... Respondents

Through: Mr Ruchir Bhatia and Mr Shailendera
Singh, Sr. Standing Counsels.

+ **W.P.(C) 11797/2019**

G.K. CHOKSI AND CO.

..... Petitioner

Through: Mr Arvind Kumar with Ms Devina
Sharma, Advocates.

versus

THE PRINCIPAL COMMISSIONER OF INCOME TAX,
CENTRAL -1 & ANR.

..... Respondents

Through: Mr Ruchir Bhatia and Mr Shailendera
Singh, Sr. Standing Counsels.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. These are writ petitions, whereby the central grievance articulated by the petitioner is that there was an enormous delay in paying the audit fee.

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2. It is not in dispute, that during the pendency of the writ petitions, the audit fee has been paid to the petitioners.

3. Broadly, the record shows, that the petitioner was engaged as an auditor in exercise of the Assessing Officer's (AO) powers under Section 142(2A) of the Income Tax Act, 1961 [in short, "the Act"].

3.1 It is also not in dispute, that insofar as the petitioner firm is concerned, audit has been carried out *vis-a-vis* three entities: (i) Futurz Next Services Limited, (ii) Jaypee Financial Services Limited, and (iii) Sahara India (Firm).

4. Insofar as the audit of the first entity, i.e., Futurz Next Services Limited, is concerned, determination was made on 24.11.2015 and accordingly, payment of Rs.49,00,000/- was made on 02.01.2020.

4.1 Likewise, insofar as Jaypee Financial Service Limited is concerned, determination was made on 18.12.2015 and payment of Rs.37,50,650/- was made on 21.12.2019.

4.2 Insofar as the last entity which the petitioner audited, i.e., Sahara India (Firm), is concerned, determination was made on 22.08.2016 and payment of Rs. 63,60,000 was made on 21.02.2020.

5. It is with regard to the delay in payment in respect of audit conducted by the petitioner *vis-a-vis* the aforementioned entities, that the petitioner seeks interest.

6. Mr Ruchir Bhatia and Mr Shailendera Singh, learned senior standing counsels, who appear on behalf of the respondents/revenue, argue that the statute confers no right on the petitioner for grant of interest.

6.1 It is, therefore, the submission of Messrs Bhatia and Singh, that although there has been delay in the payment of audit fee, the petitioner is not entitled to interest.

7. Quite obviously, Mr Arvind Kumar, who appears on behalf of the petitioner, argues to the contrary.

7.1 Mr Kumar says that because there was a delay, compensation in the form of interest should be granted to the petitioner.

7.2 In support of his plea, Mr Kumar relies on the judgment of a coordinate Bench in *SC & Associates, Chartered Accountants vs. Union of India* (2013) 36 taxmann.com 114 (Delhi) and *Sandvik Asia Ltd. vs. Commissioner of Income Tax-I, Pune and Others* (2006) 2 SCC 508.

8. We have heard the counsel for the parties.

9. The aforesaid facts are not in dispute. There is enormous delay in each case in payment of the determined audit fee. The delay is nearly four years in each case.

10. Insofar as the interest is concerned, it is payable if there is statutory enactment i.e., substantive law to that effect, or if trade, usage, custom or practice, which is enforceable in law mandates the grant of interest, or there is an agreement to that effect.

10.1 The other eventuality where interest is awarded, is in circumstances where the Court, exercising equitable jurisdiction, seeks to preserve the real value of money. This is one such circumstance, given the inordinate delay in remitting the audit fee to the petitioner for no cause. The petitioner is, thus, in our view, entitled to be compensated for delay in payment of money that it could have used, had the money been remitted to it within a

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reasonable timeframe. Four years and above cannot be construed as a reasonable period. [See *Secretary, Irrigation Department, Government of Orissa and Others v. G.C. Roy* (1992) 1 SCC 508].

11. Therefore, we are of opinion that interest ought to be paid to the petitioner at the rate of 7% per annum. Interest will run from the date of determination in each case till the date of payment of audit fee was made.

12. The payment of interest will be made to the petitioner as expeditiously as possible, though not later than eight weeks from the receipt of copy of the order.

13. List the matters for compliance on 13.04.2023.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

JANUARY 18, 2023/pmc

[Click here to check corrigendum, if any](#)

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