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

\+ W.P.(C) 4879/2023

FADA TRADING PRIVATE LIMITED .....Petitioner

Through: Mr. Ruchesh Sinha, Mr. Pankaj Aggarwal and Ms. Monalisa Maity, Advocates.

versus

INCOME TAX OFFICER WARD 9(1) DELHI & ANR. .....Respondents

Through: Mr. Debesh Panda, SSC with Ms. Zehra Khan, Mr. Vikram Aditya Singh, JSCs and Ms. Anauntta Shankar, Advocates.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

<u>O R D E R</u>

% **17.09.2024**

1. The instant writ petition, as originally filed, had prayed for the following reliefs:-

> "a. To admit the writ petition on merits as this Hon'ble Court has full jurisdiction to hear the same.
> b. That this Hon'ble Court may be pleased to issue a writ of mandamus, or any other appropriate writ, order or direction to the Respondents to process the refund of Rs. 40,00,000/- as per the challan and reflected in form no. 26AS and/or Rs. 40,90,620/- reflected in the revised computation of income issued alongwith the order passed U/s 154 of the Income Tax Act, 1961 for the A.Y. 2018-19alongwith the applicable interest under the provisions of the Income Tax Act, 1961 in the case of the Petitioner.
> c. Such other and further reliefs be granted as the nature and circumstances of the case may require, including granting the cost of this writ petition to the Petitioner."

2. Subsequently and after we had issued notice, the respondents

proceeded to reject the claim for refund in terms of an order dated 23 January 2024. Pursuant to the liberty granted, the said order was challenged by way of an amendment application, which has since then been allowed by our order dated 04 March 2024.

3. We note that while dealing with the claim for refund, the **Assessing Officer**[1] has observed as follows: -

> "a) <u>The assessee submission that a refund of Rs. 40,00,000/- is due to rectification order generated vide DIN & Order No. ITBA/REC/S/154/__1/2021-22/1037863486(1) dated 16.12.2021. in this regard, it is to state that the AO had not allowed credit of Rs. 40,00,000/- in the order passed u/s 143(3) being the same was not claimed by the assessee in the return of income. The order passed u/s 154 by the AO is without jurisdiction as the approval from Addl. CIT, Range-7, New Delhi has not been taken and Hon'ble Supreme Court in the case of M/s Goetze India Ltd. vs. CIT Delhi is not entertainable.</u>
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> In view of the above application filed by the assessee on dated 11.01.2023 is Rejected."

4. As is manifest from the above, the AO has essentially held against the petitioner on the ground that the refund was not embedded in the return which was filed. The AO has also taken into consideration a deposit of INR 40,00,000/- which came to be made subsequent to the filing of the return. In view of the above, it proceeds to hold that the decision of the Supreme Court in **Goetze (India) Ltd. vs. Commissioner of Income Tax**[2] would be liable to be read as warranting rejection of the application which was made.

5. Curiously, and this we are constrained to observe, the AO further chooses to describe the order dated 16 December 2021 under Section 154 of the **Income Tax Act, 1961**[3] itself being invalid since

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[1] AO
[2] 2006 SCC OnLine SC 1446
[3] Act

the same came to be issued without the approval of the Additional Commissioner of Income Tax.

6. We fail to find any justification that may have warranted the AO to have rendered that finding. Notwithstanding the above and insofar as the claim for refund and the same itself being subject to the furnishing of a revised return is concerned, we note that an identical question arose for our consideration in **Munchener Ruckversicherungs Gesellshaft Aktiengesellschaft in Munchen vs, The Commissioner of Income Tax International Taxation 2 & Anr.**[4].

7. In *Munchener*, we had taken note of provisions made in Section 155(14) of the Act itself and which obliges the AO to examine the requirement of amending the original order of assessment in case a Form 26AS comes to be placed before it subsequently. While examining this aspect, we had held as follows: -

> "14. That only leaves us to examine the correctness of the view expressed by the Commissioner when it held that the petitioner was liable to revise its return before being considered eligible to refund of the tax which had been deducted at source. The view as taken in this respect is equally untenable when tested on the anvil of Section 155(14) of the Act. That provision reads as under:-
>
> "**155. Other amendments**
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> xxxx xxxx xxxx
>
> (14) Where in the assessment for any previous year or in any intimation or deemed intimation under sub-section (1) of section 143 for any previous year, [credit for tax deducted or collected in accordance with the provisions of section 199 or, as the case may be, section 206C] has not been given on the ground that the certificate furnished under section 203 [or section 206C] was not filed with the return and subsequently such certificate is produced before the Assessing Officer within two years from the end of the assessment year in which such income is assessable, the Assessing Officer shall amend the order of assessment or any intimation or deemed intimation under sub-section (1)

[4] 2024:DHC:7052-DB

> of section 143, as the case may be, and the provisions of section 154 shall, so far as may be, apply thereto:
> Provided that nothing contained in this sub-section shall apply unless the income from which the tax has been deducted [or income on which the tax has been collected] has been disclosed in the return of income filed by the assessee for the relevant assessment year."

15. As is manifest from the above, the statute prescribes that where credit for tax has not been given on the ground of either a certificate having not been furnished or filed, but which is subsequently presented before the AO, the same would be sufficient for the assessment order being amended. Section 155(14) thus places the AO under a statutory obligation to amend the order of assessment once it is established that the contingencies alluded to in that provision are duly established. Sub-section (14) neither contemplates nor mandates the original return being amended or revised. That provision essentially takes care of contingencies where TDS is either subsequently credited or comes to be reflected in Form 26AS after a time lag. An assessee may face such a spectre on account of a variety of unforeseeable reasons.

16. However, that in itself can neither be viewed as fatal nor an irreversible event which would detract from the right of the assessee to claim benefit of tax which has been duly deducted. The statute itself adopts measures to cater to such an eventuality by incorporating remedial measures in Section 155(14) of the Act. The essence of Section 155(14) is that once that amount comes to be reflected in Form 26AS and the updated form comes to be submitted before the AO for its consideration, that authority is obliged to acknowledge the same and amend the assessment accordingly."

8. We and for the reasons aforenoted, allow the instant writ petition and quash the order dated 23 January 2024.

9. The AO shall examine the prayer for refund afresh bearing in mind the observations made hereinabove.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

SEPTEMBER 17, 2024/*vp*