



\$~7

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

+ **W.P.(C) 7400/2023**

INTERTEK INDIA PRIVATE LIMITEDPetitioner

Through: Ms. Ritu Bhalla, Ms. Rubal
Bansal Maini, Mr. Prakhari
Pandey and Mr. Satvik Sareen,
Adv.

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ANR.

.....Respondents

Through: Mr. Anurag Ojha, SSC along
with Ms. Hemlata Rawat and
Mr. V.K. Saxena, JSCs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% **11.12.2024**

CM APPL. 34170/2024 (Necessary Order/Direction)

1. The short issue which survives post the final disposal of the writ petition is the grievance of the applicant/writ petitioner of the refund as framed not taking into account the total tax as reflected in Form 26AS.

2. As per the respondents, the refund has been duly computed in accordance with the particulars which stood reflected in the Return of Income. However, and undisputedly, the total amount of tax as deposited by the applicant would have to be determined and accepted in terms of the particulars as they appear in the Form 26AS which has been duly provided to the **Assessing Officer**¹.

¹ AO



3. We, in this respect, also bear in consideration the following observations which appear in our decision in **ESS Singapore Branch vs. Deputy Commissioner of Income Tax & Ors**²:-

“9. Having heard Mr. Kaka, learned senior counsel appearing for the writ petitioner and Mr. Rai, learned counsel who appears for the respondents, we find ourselves unable to sustain the position as taken by the respondents bearing in mind the apparent and unquestionable mandate of Section 240 of the Act.

10. As would be manifest from a reading of that provision, in cases where a refund becomes due and payable consequent to an order passed in an appeal or other proceedings, the AO is obliged to refund the amount to the assessee without it having to make any claim in that behalf. The reference to Section 239 is thus clearly misconceived. The claim of the petitioner for being accorded credit of the entire TDS as reflected in Form 26AS was thus liable to be accorded recognition along with interest to be computed in accordance with Section 244A of the Act.

11. Regard must also be had to the fact that the TDS which had been duly deposited becomes liable to be treated as tax duly paid in terms of Section 199 and interest thereon would consequently flow from the first day of April of the relevant AY to the date on which the refund is ultimately granted by virtue of Section 244A(1)(a) of the Act. The contention of the respondents, therefore, that interest would flow only from the date of the order of the Tribunal is thoroughly misconceived.

12. We bear in mind the undisputed position that in the present case the AO was called upon to give effect to a direction framed by the Tribunal. Viewed in that light, the stand as taken by the AO is clearly rendered unsustainable insofar as it restricts the claim of the petitioner to the disclosures made in the Return of Income.

13. In our considered opinion, it would be wholly illegal and inequitable for the respondents to give short credit to the tax duly deducted and deposited based on the claim that may be made in a Return of Income. It is pertinent to note that insofar as the question of rights to live feed being treated as royalty is concerned and other allied issues pertaining to the merits of the dispute stand settled right up to this Court by virtue of the judgment rendered by us in ITA 812/2023.

14. The reliance placed on the decision of the Supreme Court in **Goetze (India) Ltd. vs. Commissioner of Income Tax** is also clearly misconceived and rendered unsustainable bearing in mind the following principles which have come to be enunciated by us in our recent decision in **Mitsubishi Corporation vs. Commissioner of Income Tax**. While dealing with a similar objection in *Mitsubishi*

² 2024 SCC OnLine Del 5838



Corporation, we had held as follows:-

“**16.** Any doubt which could have possibly been harboured in this respect in any case stands laid to rest bearing in mind the recent judgment rendered by the Supreme Court in *Wipro Finance Ltd. v. CIT*. As would be evident from a reading of paragraph 10 of the report, an identical objection appears to have been raised on behalf of the Revenue with it being contended that since the assessee had taken a particular position with respect to an item of expenditure in the return, not only was the Tribunal disentitled in law to entertain a fresh claim, the same in any case could not have been taken into consideration for the purposes of according relief to the assessee.

17. The aforesaid contention came to be negated by the Supreme Court in the following terms:—

“**10.** The learned Additional Solicitor General appearing for the Department had faintly argued that since the appellant in its return had taken a conscious explicit plea with regard to the part of the claim being ascribable to capital expenditure and partly to revenue expenditure, it was not open for the appellant to plead for the first time before the Income-tax Appellate Tribunal that the entire claim must be treated as revenue expenditure. Further, it was not open to the Income-tax Appellate Tribunal to entertain such fresh claim for the first time. This submission needs to be stated to be rejected. In the first place, the Income-tax Appellate Tribunal was conscious about the fact that this claim was set up by the appellant for the first time before it, and was clearly inconsistent and contrary to the stand taken in the return filed by the appellant for the concerned assessment year including the notings made by the officials of the appellant. Yet, the Income-tax Appellate Tribunal entertained the claim as permissible, even though for the first time before the Income-tax Appellate Tribunal, in appeal under section 254 of the 1961 Act, by relying on the dictum of this court in *National Thermal Power Co. Ltd.*. Further, the Income-tax Appellate Tribunal has also expressly recorded the no objection given by the representative of the Department, allowing the appellant to set up the fresh claim to treat the amount declared as capital expenditure in the returns (as originally filed), as revenue expenditure. As a result, the objection now taken by the Department cannot be countenanced.

11. Learned Additional Solicitor General had placed



reliance on the decision of this court in *Goetze (India) Ltd. v. CIT* in support of the objection pressed before us that it is not open to entertain fresh claim before the Income-tax Appellate Tribunal. According to him, the decision in *National Thermal Power Co. Ltd.* merely permits raising of a new ground concerning the claim already mentioned in the returns and not an inconsistent or contrary plea or a new claim. We are not impressed by this argument. For, the observations in the decision in *Goetze (India) Ltd.* itself make it amply clear that such limitation would apply to the “assessing authority”, but not impinge upon the plenary powers of the Income-tax Appellate Tribunal bestowed under section 254 of the Act. In other words, this decision is of no avail to the Department.”

18. As is evident from the enunciation of the legal position in the decisions aforementioned, while ordinarily an assessee may be bound by the Return of Income as furnished, in case the Tribunal were to admit a question and proceed to accord relief, the same cannot be denied or be made subject to a Return of Income being revised. The insistence of the respondents on a revision of the return being a precondition clearly fails to take into consideration the plenary powers which stand conferred upon the Tribunal by virtue of Section 254 of the Act.

19. In light of our conclusions on the principal question which stood posited, we observe that the challenge to the Circular of the CBDT does not really merit further consideration. All that need be observed is that once the Tribunal had called upon the AO to examine the issue afresh, the said direction could not have been disregarded by reference to a Circular issue by the CBDT.

20. We accordingly allow the writ petitions and quash the final assessment orders dated 30 November 2021 insofar as they negate consideration of the additional grounds which had been urged by the writ petitioners. The AO shall consequently consider the same and pass fresh orders in accordance with law. We, in light of the above, also quash the consequential demand and penalty notices also dated 30 November 2021”

Accordingly, and for all the aforesaid reasons, we find ourselves unable to sustain the view as taken by the respondents.

15. We accordingly allow the instant writ petition and quash the impugned order dated 08 April 2024. A writ shall consequently issue commanding the respondents to acknowledge the credit of TDS as reflected in Form 26AS of the petitioner amounting to INR 2,27,83,28,430/- and to recompute the total refund at INR



2,03,40,32,090/-.

16. The respondents while framing orders and taking appropriate steps for refund shall also bear in mind the interest which is payable to the petitioner in terms of Section 244A (1)(a) of the Act.”

4. In view of the aforesaid, we expect the AO to proceed and conclude the matter in light of the observations as they appear above. Steps be taken to dispose of this long pending issue with due expedition.

5. The application stands disposed of.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

DECEMBER 11, 2024/RW