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

\+ W.P.(C) 5786/2024 & CM APPL. 23953/2024 (Direction)

AJAY CHOWDHURY .....Petitioner

Through: Mr. Rajesh Mahna, Mr. Vikram Kakar, Mr. Shiva Narang and Ms. Silky Wadhwa, Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX INTERNATIONAL TAXATION 1(2)(1) & ANR.

.....Respondents

Through: Mr. Aseem Chawla, SSC along with Ms. Pratishtha Chaudhary and Mr. Naveen Rohila, Advs.

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

O R D E R

% **05.07.2024**

1. This writ petition has been preferred seeking the following reliefs:-

> "a. Issue a writ of mandamus or any other appropriate writ directing the Respondent to issue Tax Refund for amounting of Rs. 38,960/- for A.Y. 2023-24 along with applicable interest till the date of issuance of refund to the petitioner.
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> b. Issue a writ of mandamus or any other appropriate writ deleting the Tax Demands U/s 144/147 of the Act amounting Rs10,09,151/- along with Penalty U/s 271(1)(b) of the Act, amounting Rs10,000/- and Penalty U/s 271(1)(c) of the Act, amounting Rs4,88,220/- for A.Y 2010-11 since the respondents are now *functus officio.*
>
> c. Issue a writ of mandamus or any other appropriate writ restricting the respondents from any other adjustments in the future till the disposal of the appeal proceedings filed by the Petitioner.
>
> d. Pass such other orders which this Hon'ble Court may deem fit and proper on the facts and in the circumstances of the case."

2. The petitioner is essentially aggrieved by a retention of a tax refund which is due for Assessment Year [‘**AY**’] 2023-24 as well as for certain outstanding demands which reflect on the Income Tax Business Application [‘**ITBA**’] portal.

3. The petitioner submits that the demand which stands reflected on the ITBA portal purports to be for AY 2010-11 pursuant to an assessment order dated 19 December 2017. However, it is pointed out to us that the aforesaid assessment order as well as the connected order passed by the Commissioner of Income Tax (Appeals) [‘**CIT(A)**’] were subjected to an appeal before the Amritsar Bench of the Income Tax Appellate Tribunal and which in terms of its judgment dated 14 July 2021 had allowed the same on the following terms: -

> “7. Having heard both the sides and perusing the material on record, we find that assessee has been denied opportunity of being heard both the lower authorities. The Ld. Counsel argued that during the course of appellate proceedings, written submission were filed by the appellant assessee as evident from the impugned order wherein the Ld. CIT(A) has merely mentioned that the assessee has failed to comply notices issued by the AO, in the assessment proceeding and penalty proceedings without allowing any opportunity of being heard in rebuttal the adverse view taken by him which is against the principles of natural Justice. Accordingly, he requested for remanding back the case to the Assessing Officer with direction to grant sufficient opportunity to the assessee to explain and justify its stand with supporting documentary evidences. The Ld. DR has no objection to the request of the assessee on principles of natural justice.
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> 8. It is evident from the order of the CIT(A) that the assessee has not been granted an opportunity to rebut, the adverse view taken against him in the impugned orders by the ld. CIT(A) who had arbitrarily jumped on the decision that assessee has failed to comply the notices as per assessment order. It is, therefore, considered necessary that this case is restored back to the Ld. Assessing Officer to decide afresh by way of speaking order after issuing show cause notice before recording adverse view in the assessment order and considering the assesses replies would be furnished in the course of the fresh proceedings in the compliance of any quarry. In view of

principles of natural justice, the Ld. AO may grant sufficient opportunity of being heard to the assessee before concluding the proceedings. All plea under the law,, shall be so available to the assessee. No doubt, the assessee shall cooperate in the fresh proceedings.

9. Since, the issue of investment in mutual fund in the quantum appeal is restored to the AO to be decided afresh as above, the consequential penalty levied u/s 271(1)(b) and 271(1)(c) are deleted.

10. In the result the appeals of the assessee in ITA No 649 is allowed for statistical purpose and ITA No. 650 and 651/Asr/2019 are allowed."

4. It is in the aforesaid backdrop that Mr. Mahana contends that no demands remain outstanding for AY 2010-11 and that despite the aforesaid, all that the portal displays is that the amount is "not collectible". It was also his contention that even though the portal mentions that the aforesaid demand is not collectible, the said demand is being continually adjusted against various refunds which were payable to the writ petitioner.

5. Bearing in mind the aforesaid, we direct the concerned respondent to duly examine the aforesaid grievance of the petitioner and to take appropriate remedial steps bearing in mind the judgment of the Tribunal which has been alluded to above subject to due verification of all facts. The aforesaid action be taken within a period of six weeks from today.

6. The writ petition shall consequently stand disposed of on the above terms.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 05, 2024/RW