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

\+ W.P.(C) 8045/2023

CHRYSCAPITAL INVESTMENT ADVISORS INDIA PRIVATE LIMITED

..... Petitioner

Through: Mr. Mayank Aggarwal, Adv.

versus

INCOME TAX OFFICER & ANR.

..... Respondent

Through: Mr. Sanjeev Menon, Jr.SC.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **16.05.2024**

PER: PURUSHAINDRA KUMAR KAURAV, J.

1. In the instant petition, the solitary issue which is sought to be canvassed for our consideration is whether the Revenue was justified in adjusting the due refund against the pending demand for other assessment years ["**AY**"], wherein, the demand for adjusted AYs was already kept in abeyance.

2. The facts of the case would indicate that *vide* order dated 19.04.2022 passed by the Income Tax Appellate Tribunal ["**ITAT**"] for AY 2011-12, the assessee was entitled for certain refund amount. Thereafter, the assessee wrote several letters requesting the Revenue to pass an appeal effect order pursuant to the ITAT order.

3. However, it appears that the Revenue did not pay any heed to

the assessee's multiple requests and consequently, the assessee filed the writ petition bearing W.P.(C) No.16591/2022 before this Court. Subsequently, *vide* order dated 02.12.2022 in the said writ petition, this Court directed the Revenue to pass an appeal effect order in the assessee's case.

4. Consequently, on 12.10.2022, the Revenue passed an appeal effect order, computing the total refund due to the assessee for AY 2011-12 at INR 8,35,18,168/- including the statutory interest. However, the Revenue failed to issue the aforesaid refund. This inaction on the part of the Revenue led to various correspondences exchanged between the parties regarding the issuance of a refund.

5. However, on 09.01.2023, the assessee received a letter from the Revenue, whereby, it was informed that the refund could not be processed as the Revenue proposed to adjust the refund against the pending demands for AYs 2008-09, 2011-12 and 2014-15. Thereafter, on 09.02.2023, the assessee filed an application before the Revenue for the stay of demand for AY 2008-09 on the score that the assessee had already paid the entire amount and a dispute regarding the remaining amount was pending before the ITAT. In view of the aforesaid, the Revenue *vide* order dated 10.02.2023, acceded to the assessee's request and stayed the demand for AY 2008-09.

6. Pursuant thereto, the assessee raised its grievances before the Revenue on multiple occasions requesting the Revenue to not adjust the refund amount against the demand for AY 2008-09 in view of the stay of demand order. On 09.05.2023, the Revenue responded that the refund could not be processed as the amount got adjusted against the demands pending for AYs 2008-09 and 2014-15.

7. Aggrieved by the impugned action of the Revenue, the assessee

preferred the instant petition.

8. Mr. Mayank Aggarwal, learned counsel appearing on behalf of the assessee argued that the Revenue has unjustifiably adjusted the due refund against the purported demand for AY 2008-09. He submitted that the impugned action of the Revenue relating to the amount of INR 2,66,74,774/- which was proposed to be adjusted against the demand of AY 2008-09, cannot be countenanced in law as there was no demand existing for AY 2008-09 at the relevant time. He iterated that *vide* order dated 10.02.2023, the Revenue itself stayed the demand for AY 2008-09 and therefore, at the time of issuance of refund, the Revenue cannot adjust the due refund against the demand which did not exist at that point of time.

9. *Per contra,* Mr. Sanjeev Menon, learned junior standing counsel appearing on behalf of the Revenue vehemently opposed the submissions. He argued that pursuant to the order of this Court, a partial refund had been released to the assessee. However, it was contended that regarding the remaining amount, the Revenue was correct in adjusting the amount against the demand for other AYs as the demand was pending for other AYs.

10. We have heard the learned counsel appearing on behalf of the parties and perused the record.

11. At the outset, it be noted that *vide* order dated 01.06.2023, this Court directed the Revenue for remittance of refund along with the interest. For the sake of clarity, the relevant extracts of the said order are reproduced herein for reference:-

> "1.1 The refund concerns Assessment Year (AY) 2011-12.
> 2. To be noted, the petitioner had approached this Court by way of an writ action i.e., W.P.(C) 16591/2022 and had sought a direction for issuance of an appeal effect order.

2.1 This writ petition was disposed of via the order dated 02.12.2022 by a coordinate bench of this Court of which one of us [i.e.,Rajiv Shakdher J.] was a member,
3. Despite that the appeal effect order being passed, remittance of refund has not taken place, as yet.
4. Accordingly, issue notice.
4.1 Mr Sanjeev Menon, standing counsel, accepts notice on behalf of the respondents/revenue.
5. Mr Menon says that he will return with instructions.
6. The concerned officer will remit the refund, as ascertained, along with statutory interest before the next date of hearing.
6.1 In case the amount is not refunded, the officer concerned will indicate to Mr Menon the legal impediment in doing so. An affidavit, in that behalf, will be placed before us."

12. However, on 22.02.2024, when the writ petition was again called out, we were informed by Mr. Menon, that the Revenue had released only a partial amount and the remaining amount was adjusted against the purported demands. In furtherance of that, we had directed the Revenue to file an affidavit apprising the computation of the refund amount remitted to the petitioner and the amount adjusted against purported demand.

13. In compliance of the said order, the Revenue filed an affidavit stating that out of the total refund amount of INR 8,35,18,168/- along with the statutory interest, the amount of INR 5,67,25,299/- was given to the assessee as on 01.06.2023 and the remaining amount was adjusted against purported demand for AYs 2014-15 and 2008-09. The detailed computation sheet as reflected in the aforenoted affidavit is reproduced herein for reference:-

Order passed u/s	Dated	Refund	Issue to the assessee	Adjustment against outstanding demand
254	12.10.2022	Rs.8,35,18,168/-	Rs.5,67,25,299/- on	Rs.64,560/- against AY

			01.06.2023	2014-15
				Rs.53,535/- against Int. demand of AY 2014-15
				Rs. 1,76,65,420/- against demand of AY 2008-09
				Rs. 90,09,354/- against Int. demand of AY 2008-09
			Total: 2,67,92,869	

14. Undisputedly, the Revenue *vide* order dated 10.02.2023, acceded to the request of the assessee and stayed the demand for the AY 2008-09. The relevant extracts of the said order are reproduced herein for reference:-

> **"Sub: Stay of Demand in the case of M/s Chrys Capital Investment Advisors (India)Pvt. Ltd., (PAN: AABCC4609H), A.Y. ' 2008-09 - reg.**
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> Please refer to your application for stay of demand wherein you have mentioned that the demand of A.Y. 2008-09, determined U/s 143(3)/144C of the I.T. Act, 1961 vide order dated 19.10.2012, amounting to Rs. 11,85,12,985/- which is already paid by the assessee. Further, order u/s 154/254/143(3) r.w.s. 144C of the I.T. Act, 1961 passed on 06.08.201,8 raising demand of Rs. 1,76,65,420/- as Int. u/s 220(2) of the I.T. Act, 1961 . The assessee has requested to stay of demand, amounting to Rs. 1,76,65,420/- which may be pertaining to Int. u/s 220(2) of the I.T. Act, 1961 till the disposal of appeal filed by the assessee before Hon'ble ITAT against order dated 25.05.2017 u/s 254/143(3) r.w.s. 144C of the I.T. Act, 1961.
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> 2. <u>In view of above fact, your request to stay the outstanding</u>

tax demand for the A.Y.2008-09, amounting to Rs. 1,76,65,420/- is considered and kept in abeyance and not treat the company as an assessee in default has been duly considered and you will not be treated as an assessee in default till, the disposal of appeal."

15. At this juncture, reliance can be placed upon the decision of this Court in **Ericsson India Pvt. Ltd. v. Addl. CIT** [2020 SCC OnLine Del 2545], wherein, the Co-ordinate Bench of this Court lamented upon the lackadaisical attitude of the Revenue authorities for processing the due refund of legitimate taxpayers. The relevant paragraphs of the said decision are extracted herein for reference:-

> "13…. After the expiry of the one year period, the Revenue ought to have undertaken the processing of the return promptly, and the Assessing Officer should not have sat idle over the petitioner's request for refund. The Revenue has conveniently chosen to decline the refund solely on the basis of the issuance of a notice under section 143(2) of the Act. In our view, the Assessing Officer should have undertaken expeditious disposal of the petitioner's request for refund, and taken a decision on the same having regard to the views expressed by this court in Tata Tele Services (supra) and that of the Bombay High Court in the case of Group M. Media Ltd. (supra) and also the view of the Gujarat High Court in Corrtech International Private Limited v. Deputy CIT (2017) 86 taxmann.com 156 (Guj) ; (2018) 401 ITR 355 (Guj). We also do not find any prudence in the manner the respondents have acted by withholding the petitioner's refund. Indisputably, the petitioner is a regular taxpayer being assessed by the Department year after year. We are not able to discern any application of mind by the Revenue in declining the refund. It is an unjust and arbitrary approach to withhold refunds in anticipation of additions or disallowances that may be made after completion of assessment proceedings, particularly, since in the facts of the present case, there is no history of high tax demand. This becomes evident from the fact that for the subject assessment year 2016-17 in which the petitioner has a refund claim of Rs. 4,21,18,02,760, the draft assessment order—though not finalised, raises a demand of not more than 120 crores. In these circumstances, the Assessing Officer ought to have exercised his discretion objectively in good faith, by considering the relevant material and basing his decision thereon in a logical manner. The respondents have failed to process the returns amounting to more than Rs. 1,300 crores due to the petitioner from the Department accumulated over the years. On these refunds, interest costs under section 244A of the Act are also being incurred by the Revenue at the cost of the public exchequer.

> In addition to the above, we cannot lose sight of the fact that the petitioner would be facing fund shortage, taking into account the refunds that are withheld by the respondents. The Revenue authorities cannot become a stifling force and a stumbling block for trade and commerce. They should realise and be sensitive to the fact that by their acts and omissions, they are impeding the growth of trade and commerce. They are filing the very hen that lays the golden egg. If businesses are not permitted to operate by clocking the fund flow due to unjustified acts and omissions of the Revenue authorities in not granting refunds where due, the very source of revenue generation, i.e., taxable income would fall. The Revenue authorities have to be mindful of this. They cannot take a fool hardy and short sighted approach by withholding refunds where due. The Revenue's failure to perform its duty mandated by the Act cannot be countenanced and we disapprove the same.
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> 18. The refund of amounts claimed-where they appear justified, by itself cannot be said to be adverse to the interests of the Revenue. The interests of the Revenue lies in collecting revenue in a legal and justified manner. It does not lie in retaining the collected taxes in excess of what is justified, since the excess collection cannot even be properly termed as "revenue". The excess collection of tax is a liability of the State and it lies in the interests of the Revenue of the State to discharge its interest bearing liability without any delay. The sovereign cannot, but, be seen as fair, honest and credible in its dealings with its subjects. Any lapse in this regard tarnishes the image and credibility of the sovereign. It certainly cannot act like any unscrupulous businessman, who is seen to dodge his liabilities by resort to frivolous excuses and devious ways."

16. It is ex-facie evident from a bare perusal of the appeal effect order dated 12.10.2022 that the assessee was granted a refund amounting to INR 8,35,18,168/- including statutory interest. Subsequently, after the direction of this Court, the Revenue released only a partial refund and adjusted some amount against the purported demand for AY 2008-09 and AY 2014-15. However, it is apposite to take note of the fact that the adjustment of the remaining refund amounting to INR 2,66,74,774/- against the demand for AY 2008-09 is unsustainable bearing in mind the fact that the demand for AY 2008-09 was already kept in abeyance.

17. Therefore, when the assessee was legitimately granted the due refund *vide* appeal effect order dated 12.10.2022, the Revenue cannot proceed to adjust the aforesaid legitimate refund against the purported demands for other AYs, particularly when the aforesaid demands were stayed by the Revenue for those AYs.

18. We, accordingly, direct the Revenue to process the remaining refund which was adjusted against the purported demand for AY 2008-09, alongwith statutory interest, in accordance with law.

19. In view of the aforesaid, the writ petition is allowed in the aforenoted terms and disposed of along with pending application(s), if any.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 16, 2024/MJ