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

\+ W.P.(C) 10707/2022, CM APPL. 31097/2022

G+ J INTERNATIONAL MAGAZINES GMBH

..... Petitioner

Through: Mr. Manu Giri, Adv.

versus

PR. COMMISSIONER OF INCOME TAX (IT), DELHI- I, AND ANR. ..... Respondent

Through: Mr. Puneet Rai, SSC.

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

**ORDER**

% **21.02.2024**

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

> "(a) A Petition under Article 226/227 of the Constitution of India seeking a Writ of Mandamus and Certiorari quashing the order dated 24.03.2022 passed by Respondent No.1 under section 264 to the extent that Respondent No.1 ought to have quashed the assessment order dated 19.12.2019 on the legal issues raised by the Petitioner for assessment year 2012-13 of the Income-tax Act, 1961;
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> (b) A Writ of Mandamus directing Respondent No. 1 to allow credit of Tax Deducted at Source ("TDS") amounting to Rs.11,51,807 on Royalty Income of Rs.88,95,504 which has been assessed to tax in the hands of the Petitioner thereby allowing credit of such TDS of Rs.11,51,807 against the income tax demand raised amounting to Rs.9,16,239 excluding interest levied under section 234 of the Act;
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> (c) A Writ of Prohibition or a Writ in the nature of Prohibition or any other Writ, Order or Direction under Article 226 of the Constitution of India directing Respondents not to take any action in furtherance to the order under section 264 dated 24.03.2022 during the pendency of this petition;
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> (d) To pass ad-interim orders in terms of prayer (b) above and·

(e) To grant the Petitioner such further or other relief as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. The petitioner is essentially aggrieved by the order passed by the Revisional Authority dated 24 March 2022 which has refused to consider the claim of credit being accorded in respect of Tax Deducted at Source ["**TDS**"] on the ground that the petitioner had not filed a Return of Income ["**ROI**"]. While dismissing the revision, the Authority has held as follows: -

> "In light of the discussion, it is apparent that filing of a return of income is *sine qua non* for the Income Tax authorities to correlate the assessee's claim in the return of income in order to finalize refunds. Moreover, the assesee's claim of TDS credit is set at naught if it is not intimated to the tax authorities by way of filing of return of income. In the instant case, the assessee has never filed its return of income for the subject year. Pertinently, the case was reopened under section 148 of the Income-tax Act, 1961 due to the assessee's case being flagged in the Non-Filers Monitoring System ('NMS'). The assessee also did not file its return of income against the notice issued u/s 148 of the Income-tax Act, 1961.
>
> It is pertinent to note that the assessee has not attempted to file its return of income ever since the completion of assessment proceedings. Therefore, even through its conduct, the assessee has not demonstrated its intention of filing a return to claim a refund. It is trite law that no refund can be given without an assessee ever filing a return of income. Consequently, **this ground of the assessee, as raised in the hearing dated 23.03.2022, is also rejected.**"

3. For the purposes of disposal of the instant writ petition, we deem it apposite to notice the following facts. In terms of a letter dated 06 March 2018, the amalgamating entity was apprised of certain proceedings taken by the Assessing Officer ["**AO**"]. The aforesaid communication was followed by a Notice dated 27 March 2019 purporting to be under Section 148 of the Income Tax Act, 1961 ["**Act**"]. This notice too was addressed to the amalgamating company.

4. It is its case that the aforesaid notice was neither served on that

entity nor for that matter on the present petitioner. The petitioner ultimately filed objections including those dated 14 December 2019 apprising the respondents that the amalgamating company was no longer in existence and consequently could not have possibly been called upon to file a Return. Detailed submissions were placed for the consideration of the respondents with that communication and which was again followed by a Letter of 16 December 2019.

5. The assessment is stated to have been completed on 19 December 2019 with the AO coming to conclude that an income of INR 1,77,91,008/- was liable to be taxed in the hands of the amalgamating company. This led to the petitioner filing a rectification application before the second respondent / Assistant Commissioner of Income Tax. Since the aforesaid also did not find favor with the authorities, the revision came to be preferred before the first respondent / Principal Commissioner of Income Tax.

6. Before us, it is not disputed that since the only income which was earned by the petitioner was in the nature of royalty, it was not liable to furnish a ROI as per Section 139 of the Act. In any case and it was so contended that for the purposes of verifying the credit claimed in respect of TDS, the same is not dependent upon the filing of ROI. This since, undisputedly credit on account of TDS is in any case verifiable from the records maintained by the respondents themselves. Additionally, we find that this was not a case where the income itself had not been examined. In view of the aforesaid, we find ourselves unable to sustain the view as taken by the Revisional Authority.

7. We, accordingly allow the instant writ petition and set aside the impugned orders dated 24 March 2022 and 19 December 2019.

8. We, further direct the AO to duly verify the claim of TDS credit

and to take appropriate action in accordance with law.

9. Consequently, the writ petition is disposed of along with pending application.

**YASHWANT VARMA, J.**

**PURUSHAINDRA KUMAR KAURAV, J.**

**FEBRUARY 21, 2024/***neha*