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

+ **W.P.(C) 11054/2020**

CLIX CAPITAL SERVICES PRIVATE LIMITED

..... Petitioner

Through: Mr.Sachit Jolly, Ms.Richa Jham
and Mr.Devansh Jain, Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX & ANR.

..... Respondents

Through: Mr.Prashant Meharchandani,
Sr.SC with Mr.Akshat Singh,
Jr.SC and Ms.Ritika Vohra,
Adv for Revenue.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR
KAURAV**

ORDER

06.02.2024

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PER: PURUSHAINDRA KUMAR KAURAV J.

1. The petitioner has filed the instant writ petition under Article 226 and 227 of the Constitution of India seeking refund of Rs. 1,25,77,290/- alongwith interest, which was paid in lieu of a demand raised for the Assessment Year [“AY”] 1997-98.

2. The facts of the case show that the petitioner is a Non-Banking Financial Company, primarily engaged in facilitating finance to industry, trade etc. *via* lease, loans and hire purchase. On 31 August 1998, the petitioner filed its revised return of income [“ITR”] for AY



1997-98 declaring its total income to be Rs. 83,019,180/-. However, *vide* assessment order dated 28 February 2000, passed by the jurisdictional Assessing Officer [“AO”] at the relevant time in Mumbai, total income of the petitioner was determined to be Rs. 10,91,70,520/-. Pursuant to the said assessment order, a demand of Rs. 1,76,15,415 was raised, which was paid by the petitioner under protest.

3. Thereafter, the petitioner preferred an appeal against the assessment order dated 28 February 2000 before the Commissioner of Income Tax (Appeals) [“CIT (A)”], who *vide* order dated 21 March 2001 disposed of the said appeal under Section 250 (6) of the Income Tax Act, 1961 [“Act”] directing that the petitioner was entitled to partial refund of taxes paid under protest. Consequently, under Section 143(3) read with Section 250 of the Act, the AO at Mumbai passed an order on 30 May 2002 for AY 1997-98, determining the amount of refund to be Rs. 1,25,77,290/-.

4. Subsequently, an application dated 11 September 2002 was filed by the petitioner with the AO at Mumbai, requesting for release of refund amount i.e., Rs. 1,25,77,290/- alongwith the applicable interest.

5. Learned counsel appearing on behalf of the petitioner submits that despite the claim of the petitioner for refund being duly determined by the respondents *vide* appeal effect order dated 30 May 2002, the petitioner has been deprived of its right to get back the refund till date. He submits that, later on, the jurisdiction of the petitioner shifted from Mumbai to Delhi. Subsequently, on 16 January 2013, the Income Tax Appellate Tribunal [“ITAT”] passed an order



for AY 2008-09, directing adjustment of refunds against the demand raised for AY 2008-09, upon verification.

6. While drawing the attention of this Court towards various letters written by the petitioner to the respondent authorities in the year 2013, learned counsel submits that the respondents have failed to comply with the orders passed by the ITAT. He submits that when the Deputy Commissioner of Income Tax, Circle -12 (1), New Delhi issued letters to the AO at Mumbai seeking verification of refund in question, the latter clarified *vide* letter dated 31 December 2013 that due to non-availability of relevant records, the requisite verification *qua* the issuance of refund for AY 1997-98 could not be carried out.

7. Learned counsel further submits that the petitioner also wrote a letter dated 20 June 2014 to respondent no.1 regarding release of refunds in light of the change in jurisdiction, but to no avail. He submits that due to inaction of the respondents despite subsequent reminder letters dated 18 July 2017, 06 June 2018, 09 October 2020 and 15 October 2020, the petitioner was compelled to approach the writ jurisdiction of this Court. According to learned counsel, the respondents have failed to comply with the order of refund despite considerable lapse of time, which has caused serious financial hardship to the petitioner.

8. Learned counsel contends that the act of withholding of refund amount by the respondents amounts to dereliction of duty and is contrary to the scheme of the Act and the orders passed by competent forums. He has prayed for an order for refund of the amount alongwith the applicable interest.

9. On the contrary, learned counsel for the respondents vehemently opposes the submissions canvassed by learned counsel for



the petitioner. He submits that due to the change in system of accounting of tax payments and refunds during the years 2002-2008 as a consequence of modernization of technology, the respondents are incapacitated to verify the records for the relevant AY. He contends that after passing of the appeal effect order in 2002, it was only in the year 2013 i.e., after a lapse of more than ten years, that the petitioner approached the respondents for adjustment/refund of the amount in question. According to him, when the petitioner itself chose to sleep over its rights for such a long period, no right of entitlement accrues in favour of the petitioner to claim such refund amount. He submits that even if the alleged claims made by the petitioner are true, the admitted negligence by the petitioner in not pursuing the refund of the concerned amount for an unreasonably long duration precludes it to claim the said amount at this stage, particularly in absence of the relevant records.

10. Learned counsel further submits that the ITAT order dated 16 January 2013 does not deal with any discussion to establish the *bona fide* of the claim sought by the petitioner. He, therefore, submits that the respondents cannot be made liable to pay such untenable, unverified and delayed claims. He has also placed reliance on the decision of this Court in the case of **Harbux Singh Sidhu v. Department of Income-tax** [2021 SCC OnLine Del 3764], to substantiate his arguments.

11. We have heard the learned counsels appearing on behalf of the parties and perused the record.

12. The primary grievance of the petitioner in the instant case which requires consideration is whether the respondents are justified in withholding the refund amount on the pretext of lack of mechanism



to verify the claim of the petitioner. A bare perusal of the facts would undeniably indicate that the rights of the petitioner in lieu of the raised demand paid for AY 1997-98 were crystallized in its favour with the passing of the appeal effect order dated 30 May 2002, whereby, the refund was determined to be amounting to a sum of Rs. 1,25,77,290/-.

13. As a natural corollary, the respondents, in all fairness, ought to have immediately refunded the said amount to the petitioner once the protracted litigation came to an end in the year 2002. However, there is no material on record to suggest that either the said amount was refunded to the petitioner or adjusted for AY 2008-09 by the respondents. The only substantial ground taken by the respondents, other than the delay on the part of the petitioner to raise the claim, is their inability to verify the record to determine whether the amount in question was paid to the petitioner or not.

14. In our considered opinion, the Income Tax department, which is State under Article 12 of the Constitution, cannot be allowed to raise such a plea in the given circumstances. The relief granted to a citizen by way of an order passed by a competent forum cannot be permitted to be taken away on the ground that government authorities cannot verify their own records for issuing a refund. In the absence of any fault being attributed to the assessee, the lack of verification by the respondents of their own records, cannot be a ground to deny the refund.

15. At this juncture, it is also apposite to refer to Article 265 of the Constitution which eschews any illegal collection of taxes in any form at the behest of the State. The State is entrusted with dealing of public money and engaged in a fiduciary relationship with the common citizen. It cannot be unjustly enriched at the cost of the citizens.



Reference can be made to the decision of the Hon'ble Supreme Court in the case of **Vikram Cement v. State of M.P.** [(2015) 11 SCC 708], wherein, it was held that Article 265 imposes a limitation on the taxing power of the State insofar as it shall not levy or collect tax by a mere executive fiat and rather, it has to be done only by an authority of law. The act of retaining the refund amount would tantamount to imposition of tax without any authority of law.

16. A plain reading of Article 265 in juxtaposition with Article 300A of the Constitution of India, reflect that the said provisions prohibit the State from withholding any money and in fact, the State is ostensibly saddled with the duty to refund any amount collected as tax, which it is legally bound to return to the assessee. The said position attains greater significance when the rights of a person are evidently determined and the position of the State enjoying the money without any sanction of law becomes clear and unassailable.

17. So far as the decision relied upon by the respondents in the case of *Harbux Singh Sidhu* is concerned, the same stands on an altogether different factual footing and is distinguishable with the facts of the present case. The facts of *Harbux Singh Sidhu* would indicate that the same relates to the alleged refund of advance tax deposit.

18. However, as noted above, in the instant case, the refund sought for is in pursuance of the respondents' own decision dated 30 May 2002 i.e., the appeal effect order. The petitioner immediately had made an application dated 11 September 2002, requesting for the refund of the determined amount in light of the appeal effect order. However, the respondents failed to deal with the said request. Therefore, the facts of the case cited by the respondents are clearly distinguishable.



19. In view thereof, the respondents are estopped from contending that the petitioner sought enforcement of refund belatedly. In view of the aforesaid, the sum already determined by the respondents to be refundable to the petitioner cannot be retained and negated on the alleged grounds of laches.

20. Therefore, the respondents are, hereby, directed to refund the amount of Rs. 1,25,77,290/- alongwith the applicable interest in accordance with law, within a period of eight weeks from the date of passing of this order.

21. With the aforesaid directions, the petition stands allowed in aforesaid terms and the pending application(s), if any, stand disposed of.

YASHWANT VARMA, J.

PURUSHAINdra KUMAR KAURAV, J.

FEBRUARY 06, 2024/p