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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 03.09.2024

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W.P.(C) 14280/2023 & CM APPLs. 56582/2023 (synopsis and list of dates), 56583/2023 (interim stay)

**MUNCHENER RUCKVERSICHERUNGS GESELLSCHAFT
AKTIENGESELLSCHAFT IN MUNCHEN**Petitioner

Through: Mr. Ajay Vohra, Senior Advocate with Mr. Kaustabh Shukla, Mr. Aniket D. Agrawal, Mr. Samarth Chaudhari, Mr. Sanket Vasistha & Ms Samridhi Shrivastava, Advocates.

versus

**THE COMMISSIONER OF INCOME TAX INTERNATIONAL
TAXATION 2 & ANR.**Respondents

Through: Mr. Puneet Rai, SSC with Mr. Ashvini Kumar & Mr. Rishabh Nangia, Standing Counsels for Revenue.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

YASHWANT VARMA, J. (Oral)

1. This writ petition impugns the correctness of the order framed by the Commissioner of Income Tax (International Taxation) -2 and which has proceeded to dismiss an application under Section 264 of the **Income Tax Act, 1961**¹ preferred by the writ petitioner. In terms of the order impugned, the petitioner has been denied the credit of tax

¹ Act



which had been deducted at source by **Bajaj Allianz Life Insurance Company Limited²** in **Assessment Year³ 2015-16**.

2. The Commissioner has taken the view that since the income received from BALIC had never been offered to tax, the petitioner would not be entitled to the grant of **Tax Deducted at Source⁴** credit. It has alternatively observed that although it would have been open for the petitioner to revise its Return of Income by offering the earnings received from BALIC for taxation and claiming TDS credit in connection therewith, since it had failed to follow that route, no relief was liable to be accorded to it. It is constrained by the aforesaid order that the instant writ petition has come to be filed.

3. For purposes of evaluating the challenge which stands raised, we deem it apposite to take note of the following essential facts.

4. The petitioner is a non-resident assessee and which had, for AY 2015-16, filed its Return of Income on 30 September 2015 declaring 'nil' taxable income asserting that the receipt of INR 1,37,84,935/- would not be subject to tax in India in terms of the provisions contained in Section 90 of the Act. It consequently claimed a refund of TDS amounting to INR 1,90,84,170/- on the basis of the figures as reflected in the Tax Credit Statement being Form 26AS, which included TDS of INR 5,95,549/- deducted by BALIC.

5. It is the case of the petitioner that the TDS pertaining to the last quarter of Financial Year 2014-15 was credited by BALIC on 21 January 2016. Consequently, according to the writ petitioner, the

² BALIC

³ AY

⁴ TDS



original TDS of INR 5,95,549/- stood increased to INR 1,54,11,843/-.

6. The return for AY 2015-16 is stated to have been selected for scrutiny assessment as a consequence of which a notice under Section 143(2) came to be issued on 11 April 2016. In the meanwhile, the return for AY 2016-17 came to be submitted by the petitioner on 29 September 2016 wherein claim for TDS credit of INR 1,48,16,294/- stood embedded on account of the said amount having by then being captured in Form 26AS and which amount had remained unclaimed in AY 2015-16.

7. The return for AY 2015-16 was duly accepted by the jurisdictional **Assessing Officer**⁵ while passing an assessment order under Section 143(3) on 21 December 2017. Although the subsequent return for AY 2016-17 came to be processed in accordance with Section 143(1) and due intimation thereof sent to the petitioner on 28 March 2018, it was denied TDS credit of the sum aforesaid.

8. This led to the writ petitioner filing an online rectification application. The **Centralized Processing Centre**⁶, Bangalore apprised the petitioner on 21 June 2018 that the said application could not be considered by the CPC since the records had by then been transferred to the jurisdictional AO. This saw the petitioner moving a rectification application before the concerned AO in physical form on 12 November 2018. Since the said application was not attended to or disposed of, the petitioner was constrained to approach the Commissioner before whom the revision application came to be lodged on 20 December 2018. It is the aforesaid application which has

⁵ AO

⁶ CPC



since come to be dismissed by way of the order impugned before us.

9. Having heard Mr. Vohra, learned senior counsel who appeared in support of the writ petition as well as Mr. Rai, learned counsel who represented the respondents, we find ourselves unable to sustain the impugned order for reasons noted hereinafter.

10. The factum of tax having been deducted at source by BALIC and pertaining to income transmitted in AY 2015-16 is not disputed. The aforesaid stands duly fortified from the disclosures which appear in Form 26AS pertaining to that AY. The respondents also do not dispute that BALIC had credited the TDS on 21 January 2016 and as a consequence of which, the credit was not reflected at the time when the return had been originally filed for AY 2015-16 on 30 September 2015.

11. However, and by the time the petitioner furnished a return for AY 2016-17, Form 26AS duly reflected TDS credit of INR 1,48,16,294/-. Although the return for that year came to be processed under Section 143(1), the respondents failed to accord credit of TDS despite the same being duly reflected in Form 26AS.

12. The Commissioner, however, and despite the aforementioned undisputed facts, takes the position that since the income received from BALIC was never offered to tax, the petitioner is not entitled to be accorded credit of the TDS which was deposited. The view taken in this respect is clearly misconceived since it ignores the fact that the petitioner had consistently asserted that the income received from BALIC would not be taxable in India by virtue of Section 90 of the Act. The Commissioner also fails to bear in consideration the



indubitable fact that the return of the petitioner for AY 2015-16 was duly processed under Section 143(3) with no additions being suggested. The position as taken by the petitioner thus appears to have been duly accepted. Therefore, and in our considered opinion, the Commissioner has clearly erred in holding that the petitioner was liable to offer that income to tax before being entitled to claim the benefit of tax deducted at source.

13. Even today there is no decision that may have been taken by the respondents to hold that the income received by the writ petitioner from BALIC was liable to be taxed under the Act. The stand of the writ petitioner of the same not being exigible to tax under the Act has thus remained uncontested.

14. That only leaves us to examine the correctness of the view expressed by the Commissioner when it held that the petitioner was liable to revise its return before being considered eligible to refund of the tax which had been deducted at source. The view as taken in this respect is equally untenable when tested on the anvil of Section 155(14) of the Act. That provision reads as under:-

“155. Other amendments

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(14) Where in the assessment for any previous year or in any intimation or deemed intimation under sub-section (1) of section 143 for any previous year, [credit for tax deducted or collected in accordance with the provisions of section 199 or, as the case may be, section 206C] has not been given on the ground that the certificate furnished under section 203 [or section 206C] was not filed with the return and subsequently such certificate is produced before the Assessing Officer within two years from the end of the assessment year in which such income is assessable, the Assessing Officer shall amend the order of assessment or any intimation or deemed intimation under sub-section (1) of section 143, as the case



may be, and the provisions of section 154 shall, so far as may be, apply thereto:

Provided that nothing contained in this sub-section shall apply unless the income from which the tax has been deducted [or income on which the tax has been collected] has been disclosed in the return of income filed by the assessee for the relevant assessment year.”

15. As is manifest from the above, the statute prescribes that where credit for tax has not been given on the ground of either a certificate having not been furnished or filed, but which is subsequently presented before the AO, the same would be sufficient for the assessment order being amended. Section 155(14) thus places the AO under a statutory obligation to amend the order of assessment once it is established that the contingencies alluded to in that provision are duly established. Sub-section (14) neither contemplates nor mandates the original return being amended or revised. That provision essentially takes care of contingencies where TDS is either subsequently credited or comes to be reflected in Form 26AS after a time lag. An assessee may face such a spectre on account of a variety of unforeseeable reasons.

16. However, that in itself can neither be viewed as fatal nor an irreversible event which would detract from the right of the assessee to claim benefit of tax which has been duly deducted. The statute itself adopts measures to cater to such an eventuality by incorporating remedial measures in Section 155(14) of the Act. The essence of Section 155(14) is that once that amount comes to be reflected in Form 26AS and the updated form comes to be submitted before the AO for its consideration, that authority is obliged to acknowledge the same and amend the assessment accordingly.



17. Since the tax which was deducted by BALIC stood duly embedded in the Form 26AS which was produced by the writ petitioner and the income earned from that entity had never been held to be subject to tax under the Act, the refusal on the part of the respondents to refund that amount is rendered wholly illegal and arbitrary.

18. The writ petition is accordingly allowed. The impugned order referable to Section 264 dated 27 March 2021 is hereby quashed. The respondents are consequently commanded to refund the amount of INR 1,48,16,294/- along with statutory interest forthwith.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

SEPTEMBER 03, 2024/RW