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

\+ W.P.(C) 11947/2024 & CM APPL. 49706/2024 (Stay)

KOLAHAI INFOTECH PRIVATE LIMITED.....Petitioner

Through: Mr. Salil Kapoor, Ms. Ananya Kapoor, Mr. Vibhu Jain and Mr. Shivam Yadav, Advs.

versus

INCOME TAX OFFICER, WARD 14-3, DELHI & ORS.

.....Respondents

Through: Mr. Abhishek Maratha, SSC with Mr. Parth Semwal, Mr. Apoorv Agarwal, JSCs, Ms. Nupur Sharma, Mr. Gaurav Singh, Mr. Bhanukaran Singh Jodha & Ms. Muskaan Goel, Advs.

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

O R D E R

% **09.09.2024**

1. The writ petitioner has approached this Court seeking the following reliefs:-

> "a. Issue a writ in the nature of certiorari quashing the notice dated 08.07.2024 issued under section 221 of the Income Tax Act, 1961 ('the Act') as well as the order dated 16.07.2024 passed under section 226(3) of the Act by Respondent No. 1 in the case of the Petitioner as the same are unjust, manifestly arbitrary and against the provisions of the Act;
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> b. Issue a writ in the nature of mandamus directing the Respondents to issue refund of Rs. 1,04,325/- along with up-to-date interest and removing the lien created by virtue of order dated 16.07.2024 passed under section 226(3) of the Act as the action of the Respondents in recovering the same from the bank account of the Petitioner is illegal, unjust, manifestly arbitrary and against the provision of the Act;
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> c. Issue a writ in the nature of prohibition to restrain the Respondents from taking coercive actions against the Petitioner in relation to the outstanding demand pertaining to Assessment Years 2015-16 & 2017-18 till the appeals filed by the Petitioner for the aforesaid AYs are not disposed;
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> d. Issue a writ in the nature of mandamus directing Respondents 2 & 3 to expeditiously deal with the applications and appeals filed by the Petitioner in relation to Assessment Years 2015-16 & 2017-18;

e. Issue any other Writ, order or Direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case;

f. To allow the writ petition with cost in favour of the Petitioner and against the Respondents. "

2. The principal grievance of the petitioner is with respect to a failure on the part of the respondents to examine its petition for stay pending disposal of its appeal before the Commissioner of Income Tax (Appeals).

3. The dispute itself pertains to **Assessment Years**[1] 2015-16 and 2017-18. The record would reflect that the application under Section 220(6) of the **Income Tax Act, 1961**[2] for stay of demand came to be disposed of by the concerned **Assessing Officer**[3] in terms of an order dated 14 August 2023 requiring the writ petitioner to deposit 20% of the demand which stood created for the aforenoted AYs.

4. Aggrieved by the aforesaid and in terms of the **Central Board of Direct Taxes**[4] Office Memorandum dated 29 February 2016, the petitioner approached the **Principal Commissioner of Income Tax**[5] by way of an application dated 02 September 2023.

5. By the time the writ petition came to be laid before this Court, it was contended that even though the said application was made as far back as in September 2023, the same has not been attended to or disposed of till date.

6. Mr. Maratha, learned counsel appearing for the respondents, on instructions submits that while examining the aforesaid application, the PCIT is stated to have advised the Income Tax Officer to proceed

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[1] AYs
[2] Act
[3] AO
[4] CBDT
[5] PCIT

in the matter in light of the order dated 14 August 2023. Mr. Maratha on instruction states that the aforesaid directive appears on the order sheet which is maintained.

7. It is thus apparent that the PCIT has clearly failed to formally pass an order on the application dated 02 September 2023.

8. Though needless to state, we may only observe that a mere noting on the order sheet is not an order which can possibly be countenanced in law.

9. We, consequently, and at this stage, dispose of the writ petition requiring the PCIT to formally take up the application dated 02 September 2023 and dispose of the same within a period of one week from today. The PCIT, while considering the said application, shall also bear in mind the principles which have been enunciated by us in **National Association Of Software And Services Companies (NASSCOM) vs. Deputy Commissioner Of Income Tax (Exemption) Circle 2 (1), Delhi And Ors**[6].

10. All other rights and contentions of respective parties on merits are kept open.

11. The PCIT shall also while examining the application dated 02 September 2023 evaluate the justification for the continued attachment of the bank account of the petitioner.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

SEPTEMBER 09, 2024 /RW

[6] 2024:DHC:2078-DB