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

\+ W.P.(C) 15188/2024, CM APPL. 63612/2024

KOHINOOR EDUCATIONAL SERVICES PVT. LTD. .....Petitioner

Through: Mr. Jojo Jose, Advocate.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Ruchesh Sinha and Ms. Monalisa Maity, Advocates for R-2, 3.
Ms. Ira Singh, SPC with Ms. Pinky Pawar and Mr. Aryan Dhaka, Advocates for R-1.
Mr. Abhishek Maratha, SSC with Mr. Parth Semwal, Mr. Apoorv Agarwal, Ms. Nupur Sharma, Mr. Gaurav Singh, Mr. Bhanukaranm Singh Jodha, Ms. Muskaan Goel and Mr. Himanshu Haur, Advocates for R-4, 5.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **28.11.2024**

1. The present writ petition seeks a mandamus directing Respondent No. 2, Executive Director (Finance) Airports Authority of India to issue Accountant Certificate (Annexure-A to the Form 26A of the Income Tax

Act, 1961[1]). This certificate pertains to payments allegedly made by the Petitioner including Royalty, Rent, and other amounts as per the License Agreement dated 3rd April 2009 to Respondent No. 3- Airports Authority of India,[2] granting the Petitioner the use of the Salem Airport for a period of five years, from 3rd April 2009 to 2nd April 2015.

2. The Petitioner has approached this Court seeking relief nearly a decade after the termination of the License Agreement, making the claim patently barred by delay and laches. Nonetheless, on 28th October, 2024, the counsel for Respondents No.2 and 3 had sought time to take instructions. Today, he apprised the Court of a communication from their tax department, highlighting significant challenges in complying with the Petitioner's request. It has been categorically stated that physical records for the period prior to 1st April 2013 are unavailable, having been destroyed during the 2015 floods. Without these records, AAI cannot verify whether the income corresponding to the Petitioner's payments was included in its computation of taxable income, a precondition for issuing the certificate in Form 26A under the Income Tax Act. The said communication reads as under:

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[1] "IT Act"
[2] "AAI"

From: TAX CHQ AAI
Sent: 27 November 2024 10:53
To: Law CHQ
Cc: ED Finance 1; GM(Law), CHQ; GM Tax Cell, CHQ; Geeta Pandey; Shubham Gupta; Shivam Aggarwal; Jitendra Sharma
Subject: Fw: URGENT ACTION - WP (C) No. 15188/2024 - KOHINOOR EDUCATIONAL SERVICES PVT. LTD. VS UOI & OTH BEFORE HIGH COURT OF DELHI

Sir,

With reference to trailing email, gist of data / reply received from RHQ, SR is as under:-

1) No physical records for the period prior to 01.04.2013 is available at RHQ/SR as all records related prior to SAP-ERP) are all destroyed during the 2015 floods.

2) Prior to SAP – ERP migration (i.e. prior to 2013), RHQ/SR revenue accounting was managed through Accounting package developed by AIMS. Efforts were made to retrieve details in respect of M/s. KESPL for the period prior to 01.04.2013. However, it has been confirmed by AIMS that they are unable to retrieve any details from the package, since the records are not saved in any server.

3) Detail of payments, out all mentioned in writ petition, received from Kohinoor Education services (P) Ltd.,(KESPL) as verified from the AAI, RHQ/SR bank statement for the referred period

S.no	Date of Receipt	Amount	Receipt Mode	Remarks
1	03.04.2009	9,90,000.00	DD-5482	
2	03.04.2009	9,90,000.00	DD-5483	
3	03.04.2009	9,90,000.00	DD-5485	
4	03.04.2009	3,90,000.00	DD-5487	
5	03.04.2009	5,99,312.50	DD-5488	
6	03.04.2009	9,00,000.00	DD-5485	DD no. is differing with Court Schedule.

Fwd: Fw: URGENT ACTION - WP (C) No. 15188/2024 - KOHINOOR EDUCATIONAL SERVICES PVT. LTD. VS UOI & OTH BEFORE HIGH COURT OF DELHI

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3) Detail of payments, out all mentioned in writ petition, received from Kohinoor Education services (P) Ltd.,(KESPL) as verified from the AAI, RHQ/SR bank statement for the referred period

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5	03.04.2009	5,99,312.50	DD-5488	
6	03.04.2009	9,00,000.00	DD-5485	DD no. is differing with Court Schedule.
7	23.04.2009	3,46,080.00	DD-5514	
8	23.04.2009	2,78,459.80	DD-5513	
9	18.10.2010	2,00,000.00	DD-918305	
10	18.10.2010	14,52,322.00	DD-918196	Value is differing with Court schedule.
11	03.09.2011	39,23,305.00	DD-351055	Value is differing with Court schedule.
12	14.01.2011	47,25,000.00	DD-351046	DD no. is differing with Court Schedule.
13	17.03.2014	3,50,000.00	NEFT	
14	23.04.2014	1,12,943.00	NEFT	

4) The payments indicated under sl no.13 & 14 are received during SAP Period and it is confirmed the same has been accounted as Revenue in AAI Books in the relevant FY. Further it is to inform no TDS been deducted by the agency on these payments

5) Further, Form 26A is issued by Practicing Chartered Accountant (CA) . It is intimated by tax consultant that in the absence of Ledger of customer in the books of AAI, it cannot be verified whether AAI has included the income in its computation of income. Due to this, certificate in Form 26A cannot be issued. (copy of same is hereby attached for reference)

6) Further, RHQ SR has initiated several follow-up actions towards recovery of outstanding dues from the agency proved futile. Subsequently, eviction order been issued under AAI Act. Abandoned Assets of M/s. KESPL available in the AAI premises at Salem Airport had been auctioned through MSTC and an amount of Rs.1,14,55,000/- had been realized and the proceeds were adjusted against the dues. Further, APD, Salem had sent request letter vide letter dated 31.01.2020 to The District Collector, Salem to proceed with recovery action towards the outstanding dues along with interest by sale of the defaulter's movable or immovable property or by execution against the person of the defaulter in the manner provided under Revenue Recovery Act., 1890, which is still pending. Post Adjustment of disposal proceeds the dues position as on 05.10.2023 is Rs.6,36,41,758/- excluding penal interest

7) Copy of emails dt of RHQ, SR are also attached for reference.

Regards
Geeta Pandey
Jt.GM (F & A)
Corporate Tax Cell, CHQ
Airports Authority of India
Rajiv Gandhi Bhawan,
Safdarjung Airport,
New Delhi-110003,
Phone: - 011-24632950, *Extn: 2177/2159*

3. Moreover, the Respondents have apprised the Court that the first proviso to Section 201 of the Income Tax Act, governing the issuance of such certificates, became effective only on 1st July 2012. Consequently, the financial years 2009-10 to 2012-13, which constitute the crux of the Petitioner's grievance, are not covered by the said provision. Thus, even on merits, the relief sought for that period is unsustainable.

4. In light of the above, considering the fact that the relevant records have been destroyed and statutory provision is inapplicable for a significant

portion of the claim, any direction to issue the certificate would be practically unenforceable. That Apart, the court cannot ignore the substantial delay in approaching the Court. Petitioner's reliefs are barred by delay and laches and therefore, the Court is not inclined to entertain the present petition.

5. Dismissed along with pending application(s).

SANJEEV NARULA, J

NOVEMBER 28, 2024

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