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

\+ W.P.(C) 16531/2024

MOTHERSON TECHNOLOGY SERVICES LIMITED

.....Petitioner

Through: Ms Ananya Kapoor, Mr Utkarsha Kumar Gupta and Mr Sanat Kapoor, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX CIRCLE 16 1 NEW DELHI & ORS.

.....Respondents

Through: Mr Gaurav Gupta, SSC, Mr Shivendra Singh and Mr Yojit Pareek, JSCs.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

% **12.12.2024**

1. The petitioner has filed the present petition, *inter alia,* praying as under :-

> "A. Issue a writ in the nature of Mandamus directing the Respondents to issue refund of Rs. 12,61,85,164/- along with up-to-date interest for AY 2023-24 which is illegally adjusted against the non-recoverable demand of AY 2016-17 as the action of the Respondents is unjust, arbitrary and against the provision of the Income Tax Act, 1961;
> B. Issue a writ in the nature of Certiorari quashing the intimation issued under Section 245 of the Act dated 19.01.2024 illegally adjusting refund due to the Petitioner for AY 2023-24 against the non-recoverable demand of AY 2016-17;
> C. Issue any other Writ, order, or Direction which

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> this Hon'ble Court may deem fit and proper in the facts and circumstances of the case;"

2. The petitioner had filed its return of income for the assessment year (AY) 2016-17 declaring a total income of ₹13,01,14,770/-. The same was selected for scrutiny and the assessment proceedings culminated into the assessment order dated 13.01.2020 and the Assessing Officer (AO) determined the petitioner's income at ₹37,13,20,003/-. The petitioner challenged the assessment order before the Commissioner of Income Tax (Appeals) [hereafter *the CIT(A)*]. The petitioner also sought a stay of the demand which was granted subject to deposit of 20% of the demand along with interest which was quantified at ₹2,64,27,224/-. The said amount was recovered from the refund due to the petitioner for the AYs' 2007-08, 2011-12 and 2015-16.

3. The petitioner is aggrieved by the intimation dated 19.01.2024 issued under Section 245 of the Income Tax Act, 1961 (hereafter *the Act*) informing the petitioner of the adjustment of ₹12,81,51,872/- along with the interest, which was due to the petitioner against an outstanding demand for AY 2016-17. The Central Processing Centre, Bangalore, after adjusting the said demand, has refunded the amount of ₹19,66,666/- to the petitioner.

4. It is the case of the petitioner that the refunds due to the petitioner could not be adjusted against the outstanding demand for AY 2016-17 beyond 20% of the said demand, being a condition imposed for the grant of stay order.

5. We find merit in the aforesaid contention. Para no.4 (E) (iii) of the office memorandum dated 29.02.2016 issued by the Central Board of Direct Taxes (CBDT) expressly provides that the AO may impose such conditions

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for grant of the stay including right to adjust refund, if any, against the demand to the extent required for grant of stay, subject to the conditions as provided under Section 245 of the Act. Para No.4(E)(iii) of the circular dated 29.02.2016 is set out below:-

> "4. In order to streamline the process of grant of stay and standardize the quantum of lump sum payment required to be made by the assessee as a pre-condition for stay of demand disputed before CIT(A), the following modified guidelines are being issued in partial modification of instruction No. 1914:
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> A to D *** ***
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> (E) In granting stay, the Assessing Officer may impose such conditions as he may think fit. He may, *inter alia*,-
>
> (i) & (ii) *** ***;
>
> (iii) reserve the right to adjust refunds arising, if any, against the demand, to the extent of the amount required for granting stay and subject to the provisions of section 245."

6. In view of the above, we consider it apposite to direct the respondent to process the petitioner's refund along with the applicable interest within a period of eight weeks from date to the extent of amount adjusted against the balance 80% of the demand for AY 2016-17.

7. The petition is allowed and disposed of in the aforesaid terms.

VIBHU BAKHRU, ACJ

TUSHAR RAO GEDELA, J

DECEMBER 12, 2024

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Click here to check corrigendum, if any

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