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

% *Date of Decision : 27.05.2025*

\+ **W.P.(C) 13914/2022**

MUKESH GARG .....Petitioner

Through: Mr. Ved Jain, Mr. Nischay Kantoor, Ms. Sonia Dodeja & Mr. Sarthak Abrol, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 46-1 & ORS. .....Respondents

Through: Mr. Anurag Ojha, SSC with Mr. V.K. Saksena, JSC, Ms. Hemlata Rawat, JSC, Mr. Dipak Raj, JSC & Ms. Garima Kumar, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J. (*Oral*)

1. The petitioner has filed the present petition, *inter alia,* praying that the respondents be directed to process the petitioner's return in respect of Assessment Year [**AY**] 2016-17 and to refund an amount of ₹1,16,94,870/- on account of excess tax alongwith interest in accordance with law.

2. The petitioner had filed his original return of income under Section 139(1) of the Income Tax Act, 1961 [**the Act**] declaring an income of ₹2,39,05,340/-, on 26.08.2016. The Assessee had computed the tax on the said amount at ₹80,71,280/- after accounting for the advance tax of

₹55,00,000/- and Tax Deducted at Source [**TDS**] of ₹1,42,66,154/-. On this basis, the petitioner computed its refund at ₹1,16,94,870/- and claimed the same in terms of the said return.

3. Thereafter, on 10.08.2017, a notice of deficiency was issued to the petitioner under Section 139(9) the Act by Centralized Processing Centre, Bangalore [**CPC**], informing the petitioner that the original return filed by the petitioner was defective as the TDS claimed was not commensurate with the income offered to tax in terms of Section 139(9) of the Act. The petitioner was given a period of fifteen days to rectify the said defect.

4. The petitioner filed a rectified return on 16.08.2017, which was within the fifteen day period as provided. The petitioner also computed his claim for refund of ₹1,16,94,870/- on the basis of its computation of income.

5. The petitioner did not receive any information from the Revenue regarding his revised return or claim of refund. The time period of processing the return expired on 31.03.2018. However, the status of the petitioner's return continues to be reflected as 'under process'.

6. It is the Revenue's case that since the petitioner's return was defective and the defects were not cured, the return was not processed. Thus, the petitioner was also not granted the refund as claimed.

7. The present petition was taken up for hearing on 19.05.2025 and after hearing some arguments, the hearing was adjourned to enable the learned counsel for the Revenue to take instruction. The said order reads as under:

> "1. It is contended on behalf of the Revenue that that there is no requirement to pass any order or record reasons that the return as refiled is defective.
> 2. After some arguments, the learned counsel for the Revenue seeks

> some time to take instructions and unequivocally affirm that: (a) that the Revenue does not have access to any order whereby the petitioner's return has been found invalid after the petitioner had filed a return pursuant to the defects pointed out; (b) that there is no recording of any sought, which records that the return as revised is invalid; (c) that no intimation was sent to the petitioner that its return as revised is defective.
> 3. Let an affidavit be filed within a period of one week from date.
> 4. List on 22.05.2025."

8. Pursuant to the aforesaid order, an affidavit was filed on behalf of the Revenue which unequivocally affirms as under:

> " 4. I state:
> (a) that the Respondent does not have access to any order whereby the petitioner's return has been found invalid after the petitioner had filed a return pursuant to the defects pointed out;
> (b) that there is no recording of any sought, which records that the return as revised is invalid; and
> (c) that no intimation was sent to the petitioner that its return as revised is defective."

9. It was submitted on behalf of the Revenue, that the revised return filed by the petitioner on 16.08.2017 was also considered defective and therefore, was not processed. We find little merit in the said contention as the affidavit on behalf of the Revenue states, in unambiguous terms, that there is no recording of any sought in the records of the Revenue which records that the revised return filed by the petitioner, is invalid. Thus, we are unable to accept that any decision in this regard was rendered by the AO or any other authority as it finds no mention in any of the records of the Revenue. As is borne out from extract of the affidavit, admittedly no intimation of the revised return filed by the Revenue, as noted above being defective was ever communicated to the petitioner.

10. We also find the objection to the effect that TDS does not match with the return of income of an assessee, cannot be considered as a ground for disregarding the return filed by an assesee. The finding of discrepancy between the return filed and the TDS collected/deposited by the deductors may pose a ground for further inquiry and to test whether the amount of income which has been disclosed by an assessee is true and correct. But, it cannot be a ground for the Revenue to totally ignore the same.

11. Mr. Saksena, the learned counsel for the Revenue further submitted that on account of a search conducted in respect of another person, notices under Section 153C of the Act were issued for assessing the petitioner's income for AY 2016-17. The re-assessment proceedings culminated in an assessment order dated 31.05.2023 passed by the Assessing Oficer [**AO**] under Section 153C of the Act, whereby the AO has made an addition of ₹76,62,180/- and the petitioner's income has been assessed at ₹3,15,67,800/-.

12. He submitted that the petitioner may apply for rectification of the said assessment order to also include the refund and the AO shall process the same. However, the learned counsel of the petitioner points out that the petitioner's requests to the aforesaid effect were not considered on the ground that the proceedings under Section 153C of the Act cannot accrue to the benefit of the assessee and no refund could be processed as the intital return was found defective.

13. We do not consider it apposite to examine this issue in these proceedings for essentially two reasons. First, we find that the petitioner's return as rectified could not be ignored as stated earlier. Since no addition

has been made by the AO on the scrutiny of the return at the intital stage, the petitioner's claim for refund was required to be processed. Second, that the learned counsel for the Revenue, on instructions, has made a statement that the petitioner's application for rectification of the assessment order passed under Section 153C of the Act to seek grant of refund on account of the excess tax paid after adjusting the tax liability in terms of the assessment order under Section 153C of the Act would be processed.

14. We find no grounds to reject the same.

15. In view of the above, the present petition is disposed of *albeit* with a direction that the Revenue would be bound down to the statement made in this court. It is also made clear that the petitioner is at liberty to file the rectification application relying on the amount of Advance Tax and TDS as reflected in Form 26AS.

16. In view of our finding that the refund due to the petitioner was required to be processed; the assessment order passed under Section 153C determining a lesser amount of refund due to the additions made, cannot be considered as providing an advantage to the petitioner in proceedings under Section 153C of the Act.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 27, 2025/ *'A'*

Click here to check corrigendum, if any