

Chief Justice's Court

Case :- WRIT TAX No. - 1953 of 2024

Petitioner :- Dish TV India Limited

Respondent :- Commissioner of Income Tax (TDS) and 2 others

Counsel for Petitioner :- Vivek Sarin, Divyanshi Singh, Harsh Vardhan Gupta

Counsel for Respondent :- Gaurav Mahajan, Manu Ghildyal

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Kshitij Shailendra, J.

1. This writ petition has been filed by the petitioner seeking refund of Rs.2,19,42,954/- as amount of tax arrears refundable to the petitioner as per the order of full and final settlement of tax arrears in Form 5 dated 20.09.2022 issued under Section 5(2) read with Section 6 of the Vivad Se Vishwas Act, 2020 ('VSV Act, 2020') along with interest under Section 244A of the Income Tax Act, 1961 ('Act, 1961').

2. It is *inter-alia* indicated that the TDS return was filed by the petitioner for F.Y. 2008-09, which was taken up for assessment by the assessing officer. The assessment proceedings were concluded vide assessment order dated 31.3.2011 creating a total demand of Rs.40,56,14,101/- under Section 201/201(1-A) of the Act, 1961. The demand was raised on the alleged short payment of TDS along with interest.

3. The demand was challenged by the petitioner before the first appellate authority, who by order dated 21.8.2013 allowed the appeal and remanded the matter back for fresh assessment. The assessing officer by the revised assessment order dated 18.11.2013 imposed total demand of Rs.2,25,48,341/- (tax demand of Rs.6,05,387/- and interest Rs.2.19 crore) for F.Y. 2008-09.

4. A demand notice dated 18.11.2013 under Section 156 of the Act, 1961 withholding refund equivalent to demand of Rs.2,25,48,341/- was passed. The revised assessment order dated 18.11.2013 was challenged by the petitioner before the Income Tax Appellate Tribunal ('I.T.A.T.'), which by order dated 29.2.2016 dismissed the appeal filed by the petitioner. The order passed by the I.T.A.T. dated 29.2.2016 was challenged before this Court by filing Income Tax Appeal No. 26 of 2018.

5. In the meanwhile, the Central Government notified the VSV Act, 2020 to provide for resolution of tax disputes. The petitioner by submitting Form 1 & 2 dated 8.3.2021 applied for the settlement of disputed tax for F.Y. 2008-09 under the VSV Act, 2020 *inter-alia* indicating the amount payable under the VSV Act, 2020 at Rs.6,05,387/-. The application made by the petitioner was accepted and certificate in Form 3 was issued determining Rs.2,19,42,954/- as amount refundable to the petitioner.

6. As required, the petitioner filed declaration of advance payment in Form 4 dated 31.05.2021, based on which certificate dated 16.04.2021 was issued. The petitioner withdrew the pending Income Tax Appeal from this Court and the respondents issued order for full and final settlement of tax arrears under Section 5(2) of the VSV Act, 2020 in Form 5 dated 20.09.2022, indicating refundable sum of Rs.2,19,42,954/-. However, the amount was not refunded as determined by order dated 20.09.2022 despite several follow ups and representations made to the respondents seeking refund along with interest. No response was received by the petitioner. Based on the said submissions, relief, as noticed hereinbefore, has been sought.

7. Learned counsel for the respondents were directed to complete his instructions.

8. Today Sri Manu Ghildyal, learned Standing Counsel appearing on behalf of the respondents submitted that after filing of the writ petition, a communication dated 19.11.2024 has been issued to the petitioner requesting the company to submit their claim for refund of excess TDS in prescribed Form 26B through online functionality provided in TRACES so that further necessary action may be taken by the office and that if the petitioner does the needful, the refund would be paid to it.

9. It is further submitted that under the provisions of Section 7 of the VSV Act, 2020 no interest is payable.

10. Learned counsel for the petitioner made submissions that the plea raised by the respondents by sending communication dated 19.11.2024 is *de-hors* the provisions of the VSV Act, 2020 and Act, 1961.

11. Submission has been made that the petitioner is seeking refund based on the provisions of VSV Act, 2020 whereby Form 5 indicating the amount refundable has been issued way back on 20.9.2022 and the respondents are bound to return the amount based on the said Form 5 along with interest under Section 244A of the Act, 1961 and the plea raised pertaining to the submission of Form 26B for seeking refund has been raised only with a view to deprive the petitioner of interest to which it is otherwise entitled.

12. Reliance has been laid on ***Dwejesh Acharya v. Income-tax Officer : [2023] 157 taxmann.com 332 (Rajasthan)***.

13. Learned counsel for the respondents reiterated the submissions that petitioner has to apply in Form 26B as the amount of refund pertains to excess TDS and that on such application being made in Form 26B, needful would be done to the petitioner.

14. We have considered the submissions made by learned counsel for the parties and perused the material available on record.

15. The facts are not in dispute wherein, the petitioner applied under the VSV Act, 2020 and in full and final settlement Form 5 under the provisions of the VSV Act, 2020 was issued entitling the petitioner to refund of Rs.2,19,42,954/-. Despite issuance of the said Form, the amount, which should have been automatically paid by the respondents, was not paid, forcing the petitioner to file the present petition.

16. After filing of the present petition, after a passage of two years, it did not lie on the respondents that the petitioner was required to fill Form 26B of the Income Tax Rules for seeking the refund. The said action of the respondents, has no basis inasmuch as once Form 5 under the VSV Act, 2020 was issued entitling the petitioner to a refund of Rs.2,19,42,954/-, there was no question of the respondents then requiring to file Form 26B as now sought to be demanded by the respondents.

17. A perusal of the Rules would reveal that Form 26B is required to be filled up if the assessee claims refund paid under Chapter XVII-B of the Act, 1961. The stage of requirement of filling up the Form 26B was long over in the year 2008-09 itself and the present refund was being sought by the petitioner in terms of the provisions of the VSV Act, 2020, which did not require filling up any Form, as claimed by the respondents and as such, the demand made has no sanction in law.

18. So far as the demand made by the petitioner with regard to interest is concerned, the Delhi High Court in the case of **Ms. Anjul v. Office of PCIT** : [2022] 145 taxmann.com 140 while relying on judgment of Hon'ble Supreme Court in **Union of India v. Tata Chemicals Limited** : (2014) 6 SCC 335 held that the State having received the money without right and having retained and used it, is bound to make the party good, just as an individual would do under like circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest.

19. Bombay High Court in the case of **UPS Freight Services India (P) Ltd. v. Dy. CIT** : [2022] 156 taxmann.com 489 while following the order in the case of **Ms. Anjul (supra)** also ordered for payment of interest as per the rate prescribed under Section 244A of the Income Tax Act in similar circumstances.

20. So far as the plea raised by learned counsel for the respondents with reference to provisions of Explanation to Section 7 of VSV Act, 2020 is concerned, the same has been noticed for rejection only.

21. The provisions of Section 7 of VSV Act, 2020 read as under:

"7. Any amount paid in pursuance of a declaration made under section 4 shall not be refundable under any circumstances.

Explanation.- For the removal of doubts, it is hereby clarified that where the declarant had, before filing the declaration under sub-section (I) of section 4, paid any amount under the Income-tax Act in respect of his tax arrear which exceeds the amount payable under section 3, he shall be entitled to a refund of such excess amount, but shall not be entitled to interest on such excess amount under section 244A of the Income-tax Act."

22. A bare perusal of the Explanation would reveal that the Explanation pertains to payment of any amount under the Income Tax Act for the period before filing the declaration under sub- section (1) of Section 4 of the VSV Act, 2020 and nothing to do with the entitlement to interest for the period after issuance of Form No.5 indicating entitlement of the petitioner to the amount of refund.

23. In view of the above discussion, for the delayed payment, the petitioner is entitled to interest on the refund amount for the delay beyond the period of 90 days from the date of refund order i.e. 20.09.2022.

24. Consequently, the writ petition is allowed.

25. It is directed that respondents shall make payment of refund of Rs.2,19,42,954/- along with interest @ 6% per annum on the delayed refund amount with effect from 20.12.2022 i.e. beyond the period of 90 days from the date of determination of refund amount on 20.9.2022 till the date of actual payment to the petitioner. The entire amount of refund and interest be paid within a period of eight weeks from the date of this order.

Order Date :- 2.12.2024
nd

(Kshitij Shailendra, J.) (Arun Bhansali, CJ)