

OD-5

WPO/29/2026

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

NOMURA RRESEARCH INSTITUTE
FINANCIAL TECHNOLOGIES INDIA PVT.
LTD.

-VERSUS-

UNION OF INDIA AND ORS.

BEFORE:

The Hon'ble JUSTICE SMITA DAS DE

Date : 12th June, 2026.

Appearance:

Mr. Pratyush Jhunhunwala, Adv.

Ms. Sruti Datta, Adv.

Ms. Saksdhi Singhi, Adv.

...for the petitioner.

Mr. Prithu Dudheria, Adv.

Mr. Amit Sharma, Adv.

...for the respondent.

The Court: The core issue in this writ petition is whether the order dated 9th December, 2025 passed by the Assistant Commissioner of Income Tax, circle 4(1) Kolkata giving effect to the order of the Commissioner of Income Tax (Appeals) dated 16th August, 2022 for the assessment year 2017-18 is barred by limitation under section 153(5) of the Income Tax Act and consequently liable to be quashed.

It is submitted by the petitioner that the Commissioner of Income Tax (Appeals) passed an order under section 250 of the said act on 16th August, 2022 where by petitioner's appeal for the assessment year in question was allowed in full.

It is mandated that as per section 153(5) of the said Act, the Assessing Officer shall give effect to the order passed under section 250 within 3 months from the end of the months in which such order is received by the Principle Commissioner or Commissioner

The order of the Commissioner of Income Tax (Appeals) has been received by the Principle Commissioner of Income Tax (Appeals) on 31st August, 2022 the statutory period to pass giving effect order expired on 30th November, 2022. The impugned order dated 9th December, 2025 has passed after a delay of over 3 years and is, therefore, non est in law without jurisdiction. It is well settled that the period prescribed under section 153(5) is mandatory and an order passed beyond the said period is a nullity.

Due to illegal retention of tax of the Income Tax Department the petitioner is entitled to refund of Rs.96,69,710/- along with statutory interest under section 244A of the said Act.

Despite there being a specific direction upon the respondent authorities to obtain instruction from the concerned Assessing Officer with regard to the issue involved in the instant case, learned counsel for the respondent is unable to produce the same.

It is submitted by the respondents that delay occurred due to administrative restructuring of charges. However, no application seeking extension of time under the proviso to Section 153(5) has been filed before the expiry of the prescribed period.

After careful consideration of this case and upon perusal of the materials on record this Court finds that the facts are not in dispute. The order

of the Commissioner of Income Tax (Appeals) 16th August, 2022 has been given effect to beyond the statutory period as prescribed under the statute.

The judgment relied upon by the petitioner which has been recorded in the earlier order dated 14th May, 2026 squarely applies to the facts of this case. The failure to pass the giving effect order within the prescribed period, results in the appellate order attaining finality and the department cannot subsequently seek to give effect to.

This Court is of the view of the impugned order dated is nullity and is liable to be quashed and set aside.

Once the order is held to be a nullity the natural consequence is that the petitioner is entitled to refund of taxes paid along with statutory interest. The department cannot be permitted to unjustly enrich itself by retaining the tax of the petitioner.

In view of the above the order dated 9th December, 2025 passed by the Assistant Commissioner of Income Tax Circle (1) for the assessment year 2017-18 is hereby quashed and set aside. All consequential proceedings arising there from shall also stand quashed.

The respondents are directed to refund to the petitioner the sum of Rs.96,69,710/- for the assessment year 2017-18 and to pay an interest on the said amount under section 244A from 1st December, 2022 till the date of actual payment. The entire exercise of demand along with interest shall be completed within a period of 2 months.

With the above observations and direction the writ petition stands allowed and disposed of

Since no affidavits have been called for the allegation made in the writ petition are deemed to have been denied by the respondents.

(SMITA DAS DE, J.)

A/s.