

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 2659/2012

COURT ON ITS OWN MOTION Petitioner

Through Mr. O.S. Bajpai and Ms. Prem Lata Bansal, Sr. Advocates (Amicus Curiae).

versus

COMMISSIONER OF INCOME TAX Respondent

Through Mr. Sanjeev Sabharwal, Sr. Standing Counsel.

CORAM: HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.V.EASWAR

O R D E R

04.05.2012

This matter has been listed pursuant to the office note on letter dated 30th April, 2012 written by Anand Parkash, FCA. In the letter, several problems faced by the assesseees are mentioned. For the sake of convenience, we reproduce the entire letter in this order:

“1. I am a regular income tax practitioner. I draw the attention of this Hon'ble Court towards the numerous difficulties faced by Income Tax assesseees country wide due to the faulty processing of the Income Tax Returns and the TDS deducted at source and request that certain directions be issued by this Hon'ble Court so that lakhs of tax payers are saved from the harassment in filing revised returns/rectification petitions every year.

2. The Income tax assesseees filing Income Tax returns, on receipt of intimations u/s 143(1), generally are required to pay huge demands which are created because of mismatch of TDS as claimed in the Income Tax return. This is primarily because of the fact that department gives credit of TDS which stands reflected in their online computer records i.e Form No.26AS.

3. Whenever any Department/Govt Office/Bank deducts TDS on behalf of the assessee he has to file quarterly statement of TDS deducted, along with PAN of deductee and other details. Even if there is slightest of mismatch in reporting the particulars of deductee, the TDS deducted by the Department will not reflect in the Form 26AS and as such, no credit of TDS will be allowed to the assessee resulting in unnecessary demands and hassles of getting the rectifications done.

4. To get the rectification done, at first the assessee has to request the concerned department to file a revised statement with correct particulars of deductee and only after revised statement is filed, the same will start reflecting in the 26AS and

thereafter, the rectification is possible which is a very lengthy procedure. In many cases the concerned department refuses to revise the statement.

5. The department has communicated the demands outstanding for various years in their records to the Central Processing Unit without carrying out the necessary rectifications lying pending at their end and without reconciling their records. Now Central Process Unit while issuing refunds in the later years adjusts demands for earlier years. Sometimes the demands for earlier years may not have been communicated to the assessee. This is totally against the law. To get the necessary rectification done the assessee has to first approach the assessing officer for necessary rectification for that assessment year. Then that will be communicated by the Assessing Officer to the CPC online or as per their records. And thereafter CPC would issue refund for the Balance amount.

6. The Returns of the assesses who have expired are filed by legal heirs and in case of refund the same is issued by CPC in the name of dead person only. This causes great harassment to get the same rectified online or through assessing officer.

7. In case of ITR filed in ITR 4S by the assessee CPC is not considering the taxes paid by the assessee even if they are being reflected in Form 26AS. This is some technical problem in their software.

8. Assesses who are filing their Income Tax return u/s 44AD are not obliged to pay any Advance Tax as per the provisions of the Income Tax Act, 1961. But, while processing the Income Tax returns CPC is charging interest u/s 234B, 234-C in all such cases which is causing unnecessary rectification and paper work as the same should not be levied at all.

9. If an assessee has duly paid the taxes due to the Income Tax Department u/s 140-A, but he defaults in filing of return within the prescribed period of time, CPC is still charging interest u/s 234A from the date of payment till the filing of Income Tax Return. The Hon'ble Supreme Court in the case of Pranob Roy as reported in 309 ITR 231 has held that interest is compensatory in nature and as such no interest should be charged when the taxes stands paid either as Advance Tax or as self assessment tax.

10. During the filing of TDS return by deductor there is possibility of mistake like PAN being incorrectly mentioned, challan No. being incorrect of Assessment Year being wrongly mentioned by the deductor and also that no TDS return has been filed. In this case TDS of deductee will not be shown in Form 26AS and credit will not be allowed by the Income Tax Department. Whereas there is no fault of deductee any where.

11. There is possibility that bank punches the wrong details like TDS No., Challan No. etc. In this case there will error in processing the TDS return filed by

deductor. So, TDS amount will not reflect in Form 26AS (Pan Data) with NSDL and credit will not allow to deductee whereas TDS was deducted by the deductor.

12. In the facts and circumstances, it is prayed that suitable directions be issued to the Income Tax Department, to mitigate the hardship of lakhs of tax payers.”

2. Issue notice to Union of India, Ministry of Finance through Revenue Secretary, Central Board of Direct Taxes through Chairman, Chief Commissioner of Income Tax, Delhi-I and Director General of Income Tax (Systems), who are impleaded as respondent Nos. 1 to 4 in the present public interest writ petition.

3. In addition to meeting the averments made in the letter, we would like specific response on the following aspects:

(1) Whether procedure under Section 245 of the Income Tax Act, 1961 is being followed before making adjustment of refunds and whether assessee are being given full details with regard to demands, which are being adjusted.

(2) Whether the Revenue is taking caution and care to communicate rejection of TDS certificates and intimation under Section 143(1) in case any adjustment or modification is made to taxes paid, either as advance tax, self assessment tax or TDS.

(3) Whether and what steps are taken to verify and ascertain that the old demands against which adjustment is being made was communicated to the assessee?

(4) What steps have been taken to ensure that the deductors correctly upload the TDS details/particulars on the Income Tax website?

(5) What is the remedy available to the assessee and can he/she approach the Department in case the deductor fails to correctly upload the particulars in his/her cases?

(6) Whether an assessee can get benefit of TDS deducted or/and paid but not uploaded by the deductor and procedure to claim the said benefit?

Counter affidavit will be filed on or before 29th May, 2012. The counter affidavit will indicate and give full particulars with regard to the following:

(i) Number of assessee where income tax refund in the last year has been adjusted against demand for earlier years.

(ii) The quantum adjusted.

(iii) Cases/instances in which action has been taken against deductors, who in spite of request made by the assessee have not correctly uploaded the TDS

details.(In respect of Delhi jurisdiction) The first two figures/particulars will be furnished on the basis of computerized records maintained by the Income Tax Department on their system. If no such record is maintained/available on the system, it shall be indicated and the respondents need not furnish the said details.

We have requested Mr. O.S. Bajpai and Ms. Prem Lata Bansal, Sr. Advocates, who are present in the Court, to appear in this matter as Amicus Curiae. Both of them state that the assesseees are facing difficulty and harassment as in several cases new PAN card/numbers are issued, when an application for rectification is filed. It is submitted that when new PAN number is issued, the assesseees do not get credit of the taxes paid/deducted under the old PAN number. It is stated that new addresses are mentioned in the returns, which are uploaded on the Income Tax website. This should be treated as intimation to the Department about change of address. Address is not stated or mentioned on the PAN card. Assesseees specially the young middle class do frequently change their city or addresses. Sometimes, the assesseees are asked to apply for rectification of PAN details separately even if the new address/details are furnished in the return. They have to submit the old PAN card and, therefore, for months they are without the original PAN card. Assesseees now require PAN card for almost everything. This puts them to inconvenience and harassment without any palpable advantage or benefit to the Department. The counter affidavit will deal with the said aspects.

List on 30th May, 2012.

Copy of this order be given dasti to the learned counsel for the parties under signature of the Court Master.

SANJIV KHANNA, J.

R.V. EASWAR, J.

MAY 04, 2012