

W.P No.26634 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.01.2024

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C O R A M

The Hon'ble Mr. Justice **SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.26634 of 2023

Coda Global LLC
C/o.Sundaram & Narayanan,
Chartered Accountants,
No.18, Luz Church Road,
Mylapore, Chennai-600 004
Represented by:K.Meenatchi Sundaram,
S/o.K.V.Krishnan,
aged 59 years

... Petitioner

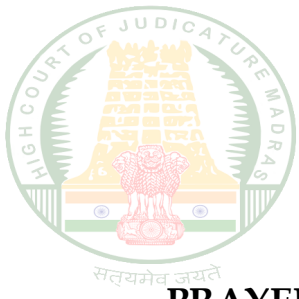
vs.

(1) The Deputy Commissioner of Income Tax,
International Taxation - 1(1),
Room No.8713, BSNL Building 4th Floor,
BSNL Tower No.16, Greams Road,
Chennai - 600 006.

(2) The Additional Commissioner of Income Tax
(International Taxation) Range - 1,
BSNL Building 4th Floor,
BSNL Tower No.16, Greams Road,
Chennai - 600 006.

(3) The Commissioner of Income Tax,
International Taxation,
BSNL Tower No.16, Greams Road,
Chennai-600 006.

... Respondents



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PRAYER : Petition filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus directing the 1st Respondent to grant refund of the amount determined u/s.143(3) of the Income Tax Act, 1961 dated and Compensatory Interest.

For Petitioner : Mr.G.Baskar

For Respondents : Mr.B.Ramana Kumar,

Senior Standing Counsel (Tax)

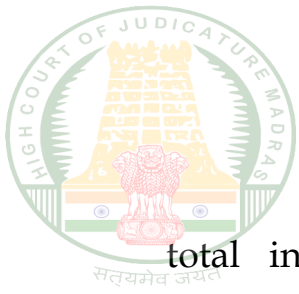
Mr.Prabhu Mukunth Arun Kumar

Junior Standing Counsel (Tax)

ORDER

Originally, the writ petitioner sought a mandamus for the grant of refund with interest thereon in respect of the Assessment Year 2021-22. After the writ petition was filed, the refund was made on 05.10.2023. Consequently, the petitioner sought an amendment of the prayer by confining it to payment of interest.

2. The petitioner is a Limited Liability Company (LLC) incorporated in the United States of America (USA). During the financial year 2020-21, the petitioner sold equity shares in India to a buyer in the USA. The buyer deducted income tax at 20% of the sale consideration. The petitioner filed its income tax return declaring a



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total income of Rs.20,10,16,940/- and claimed a refund of

Rs.2,19,51,010/-. Upon examining the return, an intimation was issued under Section 143(1) of the Income Tax Act, 1961 (the Income Tax Act) on 21.03.2022 informing the petitioner that it is entitled to a refund of Rs.2,27,20,180/-. An assessment order was issued thereafter on 08.12.2022. Since the refund was not made, the petitioner raised grievances with the Central Processing Centre (CPC). For instance, on 22.04.2022, the petitioner raised a grievance that it is unable to input the SWIFT code and IBAN as per Sl.No.13.b. of the ITR. Eventually, after being informed orally that the refund claim cannot be processed unless a bank account is set up in India, the petitioner set up a bank account in India. The said bank account was validated by the respondents on or about 07.07.2023. The present writ petition was filed in the said facts and circumstances, and the refund was made thereafter on 05.10.2023.

3. Learned counsel for the petitioner submitted that the entitlement of the petitioner to refund was accepted in the intimation issued on 21.03.2022. Therefore, he submits that the refund should



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have been made. By drawing reference to the press release dated 24.07.2017 issued by the Central Board of Direct Taxes (the CBDT), learned counsel points out that a non-resident is entitled to provide details of a foreign bank account in his return of income for issuance of refund. In the case at hand, learned counsel points out that the income tax return contained the details of the foreign bank account of the petitioner along with the IBAN. If the respondents required the SWIFT code, learned counsel submits that the same could have been requested for at that juncture. Even otherwise, he submits that the respondents could have enabled the petitioner to input the SWIFT code in the portal. Since the delay in making the refund is entirely attributable to the respondents, learned counsel submits that the petitioner is entitled to interest not only in terms of Section 244A of the Income Tax Act but also by way of compensation.

4. In support of these submissions, learned counsel for the petitioner referred to and relied upon the following judgments:



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1. *Sandvik Asia Ltd. v. CIT (2006) 150 Taxman 591 (SC)*, particularly paragraph 36 thereof.

2. *Sanjeev Kumar v. UOI [2022] 140 taxmann.com. 598 (Bombay)*, particularly paragraph 38 thereof.

3. *Sesame Workshop Initiatives (India) (P.) Ltd. v. Union of India [2023] 151 taxmann.com 52 (Delhi)*, particularly paragraph 11 thereof;

4. *Matrix Publicities and Media India (P) Ltd. v. DCIT [2023] 155 taxmann.com 588 (Bombay)*, particularly paragraphs 2 and 3 thereof;

5. *PCIT v. Ambuja Darla Kashlog Mangoo Transport Co-operative Society [2020] 114 taxmann.com 527 (Himachal Pradesh)*, particularly paragraph 9 thereof; and

6. *Union of India v. Willowood Chemicals (P.) Ltd. [2020] 119 taxmann.com 255 (Gujarat)*, particularly paragraph 6 thereof.

5. In response to these submissions, Mr.Ramana Kumar, learned senior standing counsel, submitted that no interest is payable under Section 244A, if refund is delayed for reasons attributable to the assessee. By submitting that the process for claiming a refund, as per the bank account user manual of the Income Tax Department,

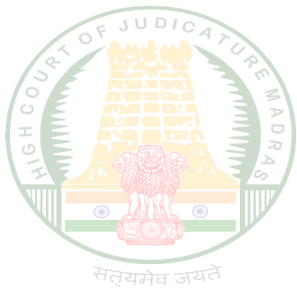


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envisages the provision of the IFS Code and validation by the Income

Tax Department, learned counsel submits that the bank account in an Indian bank was opened by the petitioner sometime in January, 2023 and that such bank account was validated only on 07.07.2023. By making allowance for a reasonable period of three months from such date, he submits that no interest is payable on the amount already refunded.

6. As regards the judgments relied upon by learned counsel for the petitioner, he submits that in all those cases, the assessee was not at fault. When the reasons for delay are attributable to the assessee, he submits that the statute provides for the exclusion of the the period of delay by the assessee. Even with regard to the foreign bank account indicated in the return of income, learned counsel submits that the SWIFT code was not provided. Without the SWIFT code, learned counsel submits that no refund can be made to a foreign bank account.



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7. Based on the submissions made, the issue that falls for

consideration is whether the petitioner is entitled to interest on refund. Section 244A of the Income Tax Act governs payment of interest on refund. The said provision, in relevant part, is as under:

Section 244A

“[Interest on refunds

244A.(1)[Where refund of any amount becomes due to the assessee under this Act], he shall, subject to the provisions of this section, be entitled to receive, in addition to the said amount, simple interest thereon calculated in the following manner, namely :—

(a) where the refund is out of any tax[collected at source under section 206C or paid by way of advance tax or treated as paid under section 199, during the financial year immediately preceding the assessment year, such interest shall be calculated at the rate of one-half per cent for every month or part of a month comprised in the period,-

(i) from the 1st day of April of the assessment year to the date on which the refund is granted, if the return of income has been furnished on or before the due date specified under sub-section (1) of section 139; or

(ii) from the date of furnishing of return of income to the date on which the refund is granted, in a case not covered under sub clause (i):

[Provided that where refund arises as a result of an order passed by the Assessment Officer in consequence of an application made by the assessee under sub-section (20) of section 155, such interest shall be calculated at the rate of one-half per cent for every month or part of a month comprised in the period from the date of such application to the date on which the refund is granted;]

(aa) where the refund is out of any tax paid under section 140A, such interest shall be calculated at the rate of one-half per cent for every month or part of a month comprised in the period, from the



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date of furnishing of return of income or payment of tax, whichever is later, to the date on which the refund is granted:

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Provided that no interest under clause (a) or clause (aa) shall be payable, if the amount of refund is less than ten per cent of the tax as determined under sub-section (1) section 43 or on regular assessment;]

(b) in any other case, such interest shall be calculated at the rate of [one-half per cent] for every month or part of a month comprised in the period or periods from the date or, as the case may be, dates of payment of the tax or penalty to the date on which the refund is granted.

Explanation:- For the purposes of this clause, “date of payment of tax or penalty” means the date on and from which the amount of tax or penalty specified in the notice of demand issued under section 156 is paid in excess of such demand.”

(2) If the proceedings resulting in the refund are delayed for reasons attributable to the assessee [or the deductor, as the case may be], whether wholly or in part, the period of the delay so attributable to him shall be excluded from the period for which interest is payable, [under sub-sections (1) or (1A) [or (1B)]] and where any question arises as to the period to be excluded, it shall be decided by the [Principal Chief Commissioner or Chief Commissioner] or [Principal Commissioner or Commissioner] whose decision thereon shall be final.

(4) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989, and subsequent assessment years :

Provided that in respect of assessment of fringe benefits, the provisions of this sub-section shall have effect as if for the figures '1989', the figures '2006' has been substituted.”

8. As is evident from sub-section 2 of Section 244A, interest is not payable if the refund proceedings are delayed for reasons attributable to the assessee. This leads to the question whether the assessee was responsible for the delay. The assessee submitted its



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return of income in respect of the Assessment Year 2021-22 and

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provided information relating to an account with the Comerica Bank

in the USA. The income tax return discloses that the IBAN was

provided but not the SWIFT code. After the assessment order was

issued, since the refund was not made, the petitioner raised

grievances through the CPC. The grievance raised on 22.04.2022 is of

particular relevance. The petitioner specifically called upon the

respondents to enable the petitioner to update the bank account

details of its foreign bank account by inputting the SWIFT code and

IBAN. In response, the respondents called upon the petitioner to re-

try. Significantly, the respondent did not inform the petitioner that

only a bank account with an Indian bank is eligible for receipt of

refund. In any event, the press release dated 24.07.2017 of the CBDT

enables a non-resident to provide a foreign bank account for

purposes of refund. Therefore, after the petitioner requested the

respondents to enable the petitioner to provide the SWIFT code and

IBAN, the delay in processing the refund cannot be attributed to the

petitioner. Even allowing for a reasonable time of about seven days

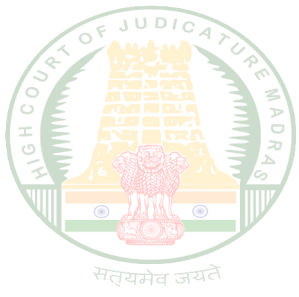


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for the respondents to respond appropriately to the request to enable the portal, the refund should have been processed.

9. Instead, the respondents appeared to have orally informed the petitioner that bank account in an Indian bank is necessary for purposes of refund. In those circumstances, such bank account was opened in January 2023. Such account was validated in July 2023 and the refund was made in October, 2023.

10. If the delay is not attributable to the assessee, Section 244A provides for refund at the rate of $\frac{1}{2}\%$ per month or 6% per annum. The petitioner has provided a calculation memo in which credit has been given for interest already paid for the period running from 01.04.2021 to 31.03.2022. As regards the period subsequent thereto, the documents on record indicate that the petitioner endeavoured to input the SWIFT code and IBAN in April 2022. Therefore, the petitioner is entitled to interest for the period from 01.05.2022 until the date of receipt of refund.



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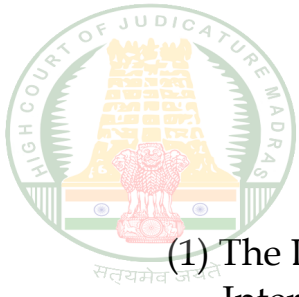
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11. This writ petition is therefore disposed of by directing the respondents through the Central Processing Centre to pay interest on the sum of Rs.2,27,20,180/- at the rate specified in Section 244-A of the Income Tax Act from 01.05.2022 to 05.10.2023. The refund shall be made within a maximum period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.

09.01.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
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To



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International Taxation - 1(1),
Room No.8713, BSNL Building 4th Floor,
BSNL Tower No.16, Greams Road,
Chennai - 600 006.

(2) The Additional Commissioner of Income Tax
(International Taxation) Range - 1,
BSNL Building 4th Floor,
BSNL Tower No.16, Greams Road,
Chennai - 600 006.

(3) The Commissioner of Income Tax,
International Taxation,
BSNL Tower NO.16, Greams Road,
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SENTHILKUMAR RAMAMOORTHY J.

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