

GAHC010196222021



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C)/6469/2021**

M/S SURYA CONSTRUCTION  
A PARTNERSHIP FIRM HAVING ITS HEAD OFFICE AT 1ST FLOOR,  
RADHIKA BHAWAN, MRD ROAD, NEAR- SBI (NEW GUWAHATI BRANCH),  
BAMUNIMAIDAM, GUWAHATI-781021, REP. BY ONE OF ITS PARTNER SRI  
DHIRAJ TALUKDAR, AGE 45 YEARS, SON OF LATE SARBESWAR  
TALUKDAR, R/O HOUSE NO. 65, PUB JYOTINAGAR, NOONMATI,  
GUWAHATI-781020.

VERSUS

THE UNION OF INDIA AND 6 ORS  
REP. BY ITS SECRETARY, MINISTRY OF FINANCE, DEPARTMENT OF  
REVENUE, NORTH BLOCK, NEW DELHI-110001.

2:BORDER ROADS ORGANIZATION

REP. BY ITS DIRECTOR GENERAL  
SEEMA SADAK BHAWAN

RING ROAD  
DELHI CANTT.  
NEW DELHI-110010.

3:CHIEF ENGINEER

PROJECT DANTAK

C/O 99 APO  
PIN-931708

4:COMMANDER

HEAD QUARTER 47  
BOARDER ROADS TASK FORCE (GREF)

C/O 99 APO  
PIN-930047

5:COMMANDER

HEAD QUARER -19  
BOARDER ROADS TASK FORCE (GREF)  
C/O 99 APO  
PIN-830019.

6:DEPUTY COMMISSIONER OF INCOME TAX

CENTRALIZED PROCESSING CENTER

INCOME TAX DEPARTMENT

BANGALURU  
PIN-560500

7:DEPUTY COMMISSIONER OF INCOME TAX

AAYAKAR BHAWAN  
CHRISTIAN BASTI  
G.S. ROAD  
GUWAHATI  
PIN-78100

For the Petitioner(s) : Mr. T.R. Sarma, Advocate

For the Respondent(s) : Mr. U.K. Goswami, CGC  
Mr. S.C. Keyal, SC, Income Tax

**BEFORE**  
**HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

**ORDER**

**Date : 04.11.2024**

Heard Mr. T.R. Sarma, the learned counsel appearing on behalf of the petitioner. Mr. S.C Keyal, the learned Standing Counsel appears on behalf

of the Income Tax Department and Mr. U.K. Goswami, the learned CGC, appears on behalf of the Border Roads Organization ( for short, BRO).

2. The case of the petitioner herein is that the petitioner is engaged in the business of construction and development works. The petitioner performed various contracts under the respondent No. 2. In respect to those works, though the petitioner had received the contractual amount after deduction of tax, more particularly, for the 3(three) financial years i.e. 2008-09, 2009-10 and 2010-11, however, in the year 2019, when notices were issued to the petitioner by the Income Tax Department, it came to light that there was no deposit being made by the respondent No. 2 of an amount of Rs. 71,85,065/- (Rupees Seventy One Lakh Eighty Five Thousand Sixty Five) which was deducted from the bills of the petitioner, more particularly, in respect to the 3(three) financial years i.e. 2008-09, 2009-10 and 2010-11. This aspect of the matter was brought to the attention of the respondent No. 2 by the petitioner in the year 2019. It also came to light that in the statement under Form 16A which were earlier furnished by the respondent No. 2, the PAN number of the petitioner was wrongly written as AAYF59156R which ought to have been AAYFS9156R. This mistake occurred in the similarity of the numerical '5' with the letter 'S' which was realized both by the petitioner and the respondent No. 2 only at a later point of time, when it was pointed out by the petitioner.

3. It is further seen, that the petitioner being aggrieved by the inaction on the part of the respondent No. 2 in not taking due steps thereupon to properly deposit the deducted dues under the provisions of Section 194 C of the Income Tax Act, 1961 had, filed the instant writ petition seeking a

writ in the nature of mandamus directing the respondent authorities to make necessary corrections in the record as regards the PAN number of the petitioner and also for depositing the amount of Rs.71,83,788/- ( Rupees Seventy One Lakh Eighty Three Thousand Seven Hundred Eighty Eight). In addition to that the petitioner has also sought for interest in terms with Section 244 A of the Income Tax Act, 1961 from the respondent No. 2.

4. The instant writ petition was filed in the year 2021. During the proceedings, various orders have been passed by this Court enquiring as regards whether the amount have been duly deposited in the correct PAN number.

5. Mr. U.K. Goswami, the learned CGC appearing on behalf of the BRO submitted that in the last week of September, 2024 on various dates the amount of Rs.71,83,788/- (Rupees Seventy One Lakh Eighty Three Thousand Seven Hundred Eighty Eight) had been duly deposited in favour of the PAN number of the petitioner being AAYFS9156R and in that regard had placed the various Form No. 16A evidencing the deposit of the said amount.

6. It was also submitted that though the petitioner has claimed Rs.71,85,065/- (Rupees Seventy One Lakh Eighty Five Thousand Sixty Five), however, an amount of Rs.71,83,788/- (Rupees Seventy One Lakh Eighty Three Thousand Seven Hundred Eighty Eight) had been deposited inasmuch as the short fall of Rs.1,277/- ( Rupees One Thousand Two Hundred Seventy Seven) was not deducted by the department.

7. Mr. U.K. Goswami, the learned CGC, has also placed before this

Court the instruction dated 30.10.2024 along with the Form No. 16A which are collectively kept on record and marked with the letter 'Y'.

8. Mr. U.K. Goswami, the learned CGC, has also submitted that during the course of the hearing that the copies of the instructions collectively kept on record and marked with the letter 'Y' has also been furnished to the learned counsel for the petitioner.

9. Taking into account that the amount of Rs.71,83,788/- (Seventy One Lakh Eighty Three Thousand Seven Hundred Eighty Eight) has already been deposited, in the opinion of this Court, the first prayer made in the writ petition no longer survives.

10. The next question which arises is as to whether the petitioner would be entitled to interest in terms with Section 244 A of the Act of 1961. In the opinion of this Court, the petitioner only in the year 2019 intimated the respondent authorities about the incorrect PAN number in the Form No. 16 A as enclosed as Annexure 10 to the writ petition.

11. In addition to that, this Court has also taken note of that there are no other materials placed before this Court to show that had these amounts which were required to be deposited by the respondent No. 2, if were deposited, the petitioner would have been entitled to the refunds. In absence of such materials, the question of granting interest as claimed do not arise. Additionally, this Court further finds it relevant to observe that Section 244 A of the Act of 1961 cannot be made applicable to the present facts as the said provision appears to duly apply in respect to cases where the Department had delayed the payment of refunds. Moreover, the delay in depositing the amount by the respondent No. 2

would be a private contractual dispute between the petitioner and the respondent No. 2

12. Accordingly, this Court does not find any ground for issuance of a writ for payment of interest in terms with Section 244 A of the Act of 1961.

13. Taking into account the above, the writ petition stands disposed of.

14. Be that it as may, before parting with the records, this Court however, makes it clear that the disposal of the writ petition and the observations so made hereinabove shall not preclude the petitioner to claim compensation before the appropriate forum for the loss suffered (if any) on account of the delay in depositing the deducted tax.

**JUDGE**

**Comparing Assistant**