



IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SMT. JUSTICE ANURADHA SHUKLA

ON THE 18th OF SEPTEMBER, 2024

WRIT PETITION No. 1263 of 2024

BIRLA CORPORATION LIMITED

Versus

*PRINCIPAL COMMISSIONER OF INCOME TAX (IT AND TP) AND
OTHERS*

.....
Appearance:

Shri Sapan Usrethe-Advocate for the petitioner.

Shri Siddharth Sharma- Advocate for the respondent.
.....

WITH

WRIT PETITION No. 1273 of 2024

BIRLA CORPORATION LTD.

Versus

*PRINCIPAL COMMISSIONER OF INCOME TAX(IT TP) AND
OTHERS*

.....
Appearance:

Shri Sapan Usrethe-Advocate for the petitioner.

Shri Siddharth Sharma- Advocate for the respondent.
.....

ORDER

Per. Justice Vivek Rusia

*Since the issue involved in these Writ Petition are common, thus
these are being decided by this common order.*

The petitioner has filed the present Writ Petition seeking



quashment of the order dated 11.07.2023 and refund of tax amount in compliance of the order dated 31.01.2022 passed by Income Tax Appellate Tribunal, Indore Bench, Indore along with interest.

The facts of the case in short are as follows;-

2. The Assistant Commissioner of Income Tax-TDS initiated proceedings under Section 201 (1)/ (1A) of the Income Tax Act. They assessed the tax liability of Rs.1,90,94,630/- and Rs.10,84,08,460/- (including interest) for the FY 2009-10, FY 2010-11 and 2011-12 from the petitioner for default of non-deduction of tax at source from the payments made on various remittances for purchase, installation and supervision charges.

3. The petitioner challenged the above findings recorded by the Assessment Officer before the CIT (A) who confirmed the demand by upholding the assessment order. Being aggrieved by the order of CIT (A), the petitioner preferred an Appeal before ITAT, Jabalpur. Vide order dated 24.12.2014, the Tribunal set aside the order of the Assessment Officer and remitted the matter back.

4. In compliance of the order dated 24.12.2014, again the proceedings were initiated by the ITO (IT & TP Bhopal) and affirmed the demand of Rs.48,07,726/- for FY 2010-11 and Rs.2,89,95,315/- for FY 2011-12. Again the petitioner preferred an Appeal before the CIT (A) but remained unsuccessful and thereafter two Appeals i.e. 33 &



34/Ind/2020 were preferred before the ITAT. Vide common order dated 31.01.2022, both the Appeals were allowed and assessment orders were quashed. During the pendency of the Appeals, the Department asked the petitioner to deposit and the petitioner deposited the outstanding tax amount in instalments aggregating Rs. 1,45,00,000/- for FY 2009-10 and Rs.3,65,00,000/- for FY 2010-11 under protest. In addition to the above, the petitioner has also deposited a withholding TDS amount of Rs.15,03,299/-

5. After the aforesaid order passed by ITAT, the respondent passed the order for both the assessment year on 20.09.2022 under Section 254 of the Income Tax Act for a refund of Rs.3,65,00,000/-. When the aforesaid amount was not paid, the petitioner submitted a representation dated 21.06.2023 to the Income Tax Officer (IT & TP), Bhopal for a refund of Rs.5,25,03,299/- and interest till date. Vide letter dated 11.07.2023, the Income Tax Officer, rejected the aforesaid request on the ground that the request for refund for the relevant assessment year can be raised, only if the assessee files its application on the TRACES Portal in the prescribed form i.e. Form 26B and secondly there is no provision available on the TRACES portal to adjust the outstanding demand of PAN or TAN against the pending refunds of the TAN and requested the petitioner to deposit the aforesaid demand, hence, present Writ Petition before this Court.



6. After noticing the respondent filed a reply by submitting that the Centralized Processing Cell (TDS) intimated that functionality of adjustment of refund against the outstanding (TAN/PAN) demand is not presently available at TRACES, therefore the request made by the petitioner for adjustment of refund of TAN against the outstanding demand of PAN cannot be considered. It is further submitted that Section 243 of the Act will not be applicable in the case of the petitioner because the petitioner files the TDS refund request online on the TRACES portal in the prescribed Form 26B in accordance with Rule 31A(3A) of the Income Tax Rules, 1962 after clearing the outstanding on its TAN, sister TANs and PAN. There is a delay attributable to the petitioner, therefore, interest under Section 244A of the Act, the interest shall not be paid.

We have heard learned counsel for the parties and perused the record.

7. The facts stated by the petitioner from the start of assessment proceedings by the Assessment Officer till the order dated 31.01.2022 in favour of the petitioner are not in dispute. It is also not in dispute that the order passed by the ITAT had attained finality as the Income Tax Department did not challenge the same before the High Court. After the order passed by the learned ITAT, the Income Tax Officer passed the order under Section 254 of the Income Tax Act, 1961 which is filed on Page No.99 by which the relief allowed by the ITAT in favour of the



assessee is Rs.48,07,726/- and net demand is 'Nil'. Chapter XIX of the Income Tax Act, of 1961 deals with the refund. Section 239 says that every claim for refund under the Chapter shall be made by furnishing a return by the provisions of section 139, however, Section 240 deals with the refund of any amount that becomes due to the assessee as a result of any order passed in the appeal or other proceeding. Section 240 mandates that the Assessing Officer shall refund the amount to the assessee without his having to make any claim on that behalf in the event of refund becomes due as a result of an order passed in the appeal. Section 243 provides payment of interest on delayed refunds that shall start accruing after the expiry of the period of three months from the date of the order granting the refund. Section 241A has been inserted by Finance Act,2001 w.e.f.01.04.2017 about the withholding of refunds in certain cases but the same would not apply in this case because these assessments are in respect of years 2010-11 and 2011-12. Section 245 also provides a set off of refunds against tax remaining payable which says that where under any of the provisions of this Act, a refund is found to be due to any person, the Assessing Officer, Deputy Commissioner (Appeal), Commissioner (Appeals) or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be, may, in lieu of payment of refund, set off the amount to be refunded or any part of that amount, against the sum, after giving in an intimation in writing to such person of the action proposed to be



taken under this section.

8. Therefore, in view of the above, after the order passed by ITAT, the respondents are bound to refund the amount to the petitioner with interest without there being any formalities to be completed by the petitioner. The non-functionality of the TRACES Portal shall not be grounds for denying the benefit arising out of the statutory provision under the Income Tax Act. The TRACES is nothing but a online Portal of the Income Tax Department to connect all the stockholders involved in the administration and implementation of TDS and TCS. The TDS is a Centralized Processing Cell created for TDS reconciliation analysis and correction enabling system which cannot run contrary to the provision of the Income Tax Act. The rights which have been given to the assessee under the Income Tax Act cannot be withheld due to the non-functionality of the TRACES. The Online Portal is created to facilitate the stakeholders and not to create hurdles in discharging the statutory duties and the statutory rights. If the Portal does not function in accordance with the Act and Rules then it requires to be suitably modified to achieve the aims and objects of the Act and Rules, therefore, there is a provision in the Income Tax Act about the refund of the amount with interest as well as set off of refund against the tax payable. The petitioner is ready for a refund as well as for set off. It is for the competent Income Tax Officer to make a decision either to refund or to adjust the same.



9. Let the entire exercise be completed within 30 days from the production of a certified copy of this order.

10. With the aforesaid observation, WRIT PETITION No. 1263 of 2024 & WRIT PETITION No. 1273 of 2024 are disposed of.

The office is directed to place a copy of this order in connected cases too.

Certified copy as per rules.

(VIVEK RUSIA)
JUDGE

(ANURADHA SHUKLA)
JUDGE

Praveen