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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 3459/2021 & C.M.No.10489/2021**

KRISHAN AGARWAL Petitioner

Through: Mr.Rohit Jain, Mr.Aniket D. Agrawal
& Ms.Manisha Sharma, Advs.

versus

PR. COMMISSIONER OF INCOME TAX 7 & ANR.

..... Respondents

Through: Mr.Puneet Rai, Sr. Standing Counsel
with Ms.Adeeba Mujahid, Jr.
Standing Counsel.
Ms.Pragya Sahay Saksena, DGIT
Systems With Mr.Ramesh
Krishnamurthi.

+ **W.P.(C) 8371/2021 & C.M.No.25917/2021**

KRISHAN AGARWAL Petitioner

Through: Mr.Rohit Jain, Mr.Aniket D. Agrawal
& Ms.Manisha Sharma, Advs.

versus

PR COMMISSIONER OF INCOME TAX 7 & ANR.

..... Respondents

Through: Mr.Puneet Rai, Sr. Standing Counsel
with Ms.Adeeba Mujahid, Jr.
Standing Counsel.
Ms.Pragya Sahay Saksena, DGIT
Systems With Mr.Ramesh
Krishnamurthi.

+ **W.P.(C) 5513/2021**

TRAVELPORT GLOBAL DISTRIBUTION SYSTEM BV

..... Petitioner

Through: Mr.Piyush Kaushik, Adv.

versus

COMMISSIONER OF INCOME TAX (INTERNATIONAL

TAXATION)-III, NEW DELHI & ANR. Respondents
Through: Mr.Ruchir Bhatia, Sr. Standing
Counsel.
Ms.Pragya Sahay Saksena, DGIT
Systems With Mr.Ramesh
Krishnamurthi.

+ **W.P.(C) 5583/2021 & CM APPL. 17357/2021**
QUALCOMM INDIA PRIVATE LIMITED

..... Petitioner
Through: Mr.Salil Kapoor & Ms.Ananya
Kapoor, Advs.
versus
PRINCIPAL COMMISSIONER OF INCOME TAX 7 & ANR.
..... RespondentS
Through: Mr. Puneet Rai, Sr. Standing Counsel
with Ms. Adeeba Mujahid, Jr.
Standing Counsel.
Ms.Pragya Sahay Saksena, DGIT
Systems With Mr.Ramesh
Krishnamurthi.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER
% **27.08.2021**

1. The petitions have been heard by way of video conferencing.
2. This Court on 25th August, 2021 in W.P.(C) Nos.3459/2021 and 8371/2021 as well as on 26th August, 2021 in W.P.(C) Nos.5513/2021 and 5583/2021 had passed the following orders:-

A. Order in W.P.(C) Nos.3459/2021 & 8371/2021 dated 25th August, 2021

“The petitions have been heard by way of video conferencing.

Writ petition No. 3459/2021 was filed by the petitioner challenging the subsequent Form-3 dated 21st January, 2021 issued by the respondent/revenue after a full and final settlement of disputed taxes in Form-5 dated 28th December, 2020 (on the basis of Form-3 dated 23rd December, 2020) had been issued. It is pertinent to mention that the subsequent Form-3 dated 21st January, 2021 had been issued on the alleged basis that the petitioner's case was a search case.

This Court vide order dated 17th March, 2021 in WP(C) 3459/2021 had stayed the subsequent Form-3 dated 21st January, 2021.

Thereafter, the respondent/revenue issued a new Form-3 dated 23rd March, 2021 treating the petitioner's case once again as a search case.

On 12th April, 2021, the respondent/revenue issued a re-revised Form-3 treating the petitioner's case as a non-search case.

The petitioner has filed a second writ petition being WP(C) 8371/2021 challenging the third and fourth Form-3 dated 23rd March, 2021 and 12th April, 2021 contending that the designated authority was rendered functus officio after initial Form-5 had been issued on 28th December, 2020.

In fact, the re-revised Form-3 dated 12th April, 2021 is identical to the initial Form-3 dated 23rd December, 2020. Consequently, the petitioner as of today is at the same position as he was on 23rd December, 2020.

However, the learned counsel for respondent/revenue insists that the petitioner should once again file Form-4 on the basis of which they would issue a fresh certificate in Form-5.

During the hearing, learned counsel for the respondent/revenue admits that the new Form-5 to be issued to the petitioner would be a photocopy of the Form-5 which had been issued to the petitioner on 28th December, 2020. Consequently, this Court is of the view that the petitioner should not be asked to furnish Form-4 and the original Form-5 dated 28th December, 2020 should be restored without any further ado!

But learned counsel for the respondent/revenue states that it is imperative that the petitioner should once again complete the process by filing Form-4 as the portal does not permit restoration of the previous Form-5 dated 28th December, 2020.

This Court is of the opinion that technology is intended to ease and facilitate transactions and cannot be used as a basis for harassing an assessee by asking him to repeatedly file unnecessary and irrelevant forms. This Court is also of the view that the software and the computerised systems should abide by lawful directions and it cannot be that the computer lays down an agenda contrary to law according to which the Court and assessee have to function. If the only impediment, in the way of granting the relief sought by the petitioners, is the software, then the same should be suitably modified.

To consider modification of the software, the DGIT (Systems) is directed to join the proceedings by way of online audio-video link on the next date of hearing.

List on 27th August, 2021.

The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.”

B. Order in W.P.(C) No.5513/2021 dated 26th August, 2021

“The petition has been heard by way of video conferencing.

Mr. Ruchir Bhatia, learned counsel for the respondent/revenue states that the system functionality, as of now, does not permit the Assessing Officer to access the TDS and prepaid taxes data for the assessment year 2016-17. He, therefore, prays for a longer time to comply with the direction given by this Court as far back as 27th May, 2021.

Since we have asked the DGIT (Systems) to join the proceeding tomorrow in another matter by way of audio-video link, list the present case on 27th August, 2021.

The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.”

C. Order in W.P.(C) No.5583/2021 dated 26th August, 2021

“The petition has been heard by way of video conferencing.

It is an admitted position that the refund of Rs.3,60,63,416/- for AY 2010-11 claimed by the petitioner in VSV Application has been set off against the outstanding tax demand of the assessee for AY 2006-07; however adjustment of refund was made against a different tax payee, i.e. QUALCOMM Incorporated (PAN: AAACQ1484H) for AY 2006-07 which happened due to technical flaw in the ITBA portal as per letter submitted by the Petitioner before the Assessing Officer on 9th March, 2021.

Mr. Puneet Rai, learned counsel for the respondents states that the Assessing Officer admits that a credit of Rs.3,60,63,416/- has to be given to the assessee in the AY 2006-07.

Learned counsel for the petitioner states that the aforesaid refund has been due and payable for more than 10 years.

Since we have asked the DGIT (Systems) to join the court proceeding tomorrow in another matter by way of audio-video link, list the present case on 27th August, 2021.

The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.”

3. In pursuance to the aforesaid orders, Ms. Pragya Sahay Saksena, DGIT (Systems) has joined the proceedings today. She states that the order dated 25th August, 2021 passed in W.P.(C) Nos.3459/2021 and 8371/2021 as well as the orders dated 26th August, 2021 passed in W.P.(C) Nos.5513/2021 and 5583/2021 have been brought to her notice. She states that her directorate is making efforts to resolve the issues flagged in all the three orders.

4. Since digitisation is being implemented at a rapid pace in the arena of Direct Taxes and a policy decision has been taken to reduce human interface, this Court is of the view that public at large should be asked to use

the new software and programme only after the said programme/software has been tested prior in time on a sufficiently large sample base of assesses. The computer programme/software should be flexible enough to incorporate the implementation of Court's orders. For this purpose, if any policy initiative is required, the DGIT (Systems) should take up the issue with CBDT.

5. During the hearing, this Court also gave practical instances of glitches and shortcomings in the computer programme and software.

6. DGIT (Systems) states that in the event any Assessing Officer has an issue with the operation of the computer programme or software, the said officer raises a ticket which is then resolved by the concerned vertical in her department, and in the event, the issue cannot be resolved by the concerned vertical, the officer can raise a ticket with another vertical.

7. The Court has suggested to the DGIT (Systems) that in the event the ticket cannot be resolved by any of the verticals due to constraints/limitations in the system or software, then a mechanism should be put in place whereby the said issue can be flagged for a policy decision before her.

8. Ms. Pragma, DGIT (Systems) assures this Court that her directorate would take steps to improve on both the fronts, namely, co-ordination and feedback. She states that wherever necessary, improvements in the process shall be carried out. She also states that she is confident that their directorate will be able to resolve the glitches in the system and shall revert back with solutions, if possible, within a fortnight.

9. Keeping in view the aforesaid, the personal appearance of DGIT (Systems) and her officers are dispensed with.

10. The respondents are directed to file a status report within two weeks.

11. List on 23rd September, 2021.

W.P.(C) 3459/2021

W.P.(C) 8371/2021

W.P.(C) 5583/2021

12. Mr.Puneet Rai, learned counsel for the respondents, prays for and is permitted to file reply-affidavits within two weeks. Rejoinder-affidavits, if any, be filed before the next date of hearing.

13. List on 23rd September, 2021.

14. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

NAVIN CHAWLA, J

AUGUST 27, 2021

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