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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 2318/2019
NAVISITE INDIA PRIVATE LIMITED & ANR.

..... Petitioners

Through: Mr.Rohit Tiwari, Ms.Tanya and
Ms.Shivani, Advs.

versus

COMMISSIONER OF INCOME TAX-06 & ANR.

..... Respondents

Through: Mr.Shlok Chandra, Sr.SC with
Ms.Madhavi Shukla, Jr.SC,
Ms.Priya Sarkar, Jr.SC and
Mr.Ujjwal Jain, Adv for
I.T.Dept.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR
KAURAV

ORDER

19.02.2024

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1. The writ petition has been preferred seeking the following reliefs:-

"(i) That the respondents may be directed to refund the amount of Rs. 31,09,744/- and Rs. 25,00,000/- forthwith, which was deposited by the assessee towards part payment of demand raised in pursuance of the assessment order passed for the Asst. Year 2008-09 dated 21.08.2012 and the assessment order passed for Asst. Year 2009-10 dated 31.10.2013 respectively, along with interest; and

(ii) Direct the respondents to pay the cost of the case to the Petitioners;

Pass such other order / direction which this Hon'ble Court may deem fit in the interest of justice."

2. The aforesaid reliefs are addressed in the backdrop of certain deposits having been made by the petitioner as a pre-condition to the grant of stay on demand and interim protection pending conclusion of



assessment proceedings. We had on the last occasion and upon noticing the submission which were addressed observed as under:-

"Learned counsel for the writ petitioner contends that the issues raised in the instant writ petition stand concluded in light of the decision rendered in **Indian Renewable Energy Development Agency Ltd. vs Pr. Commissioner of Income Tax (LTU) New Delhi & Anr.** [2023 SCC OnLine Del 8357].

In order to enable Mr. Chandra, learned counsel for the respondent to go through the aforesaid decision, let this appeal be renotified on 19.02.2024."

3. The prayer for refund is made firstly on the basis of the order of the Income Tax Appellate Tribunal ["ITAT"] dated 31 May 2013 for Assessment Year ["AY"] 2008-09 and the order dated 14 November 2014 for AY 2009-10 and which had in terms thereof remitted the aspect relating to working capital adjustments against profit margin of comparables to the Transfer Pricing Officer ["TPO"].

4. The petitioner asserts that despite the said orders of remit made way back in May 2013 and November 2014, neither the TPO nor the Assessing Officer ["AO"] have framed any final order of assessment. It is in the aforesaid backdrop that the learned counsel for the petitioner draws our attention to sub-sections (5), (7) and (8) of Section 153 of Income Tax Act, 1961 ["Act"] and which are reproduced herein below:-

"153. Time limit for completion of assessment, reassessment and recomputation.-

(5) Where effect to an order under Section 250 or Section 254 or Section 260 or Section 262 or Section 263 or Section 264 is to be given by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] wholly or partly, otherwise than by making a fresh assessment or reassessment [or fresh order under Section 92-CA, as the case may be,] **such effect shall be given within a period of three months from the end of the month in which order under Section 250 or Section 254 or Section 260 or Section 262 is received by the Principal Chief Commissioner or**



Chief Commissioner or Principal Commissioner or Commissioner, as the case may be, the order under Section 263 or Section 264 is passed by [the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be,]:

Provided that where it is not possible for the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] to give effect to such order within the aforesaid period, for reasons beyond his control, the Principal Commissioner or Commissioner on receipt of such request in writing from the Assessing Officer, [or the Transfer Pricing Officer, as the case may be,] if satisfied, may allow an additional period of six months to give effect to the order:

[Provided further that where an order under Section 250 or Section 254 or Section 260 or Section 262 or Section 263 or Section 264 requires verification of any issue by way of submission of any document by the assessee or any other person or where an opportunity of being heard is to be provided to the assessee, the order giving effect to the said order under Section 250 or Section 254 or Section 260 or Section 262 or Section 263 or Section 264 shall be made within the time specified in sub-section (3).]

(7) Where effect to any order, finding or direction referred to in sub-section (5) or sub-section (6) is to be given by the Assessing Officer, **within the time specified in the said sub-sections, and such order has been received or passed, as the case may be, by the income-tax authority specified therein before the 1st day of June, 2016, the Assessing Officer shall give effect to such order, finding or direction, or assess, reassess or recompute the income of the assessee, on or before the 31st day of March, 2017.**

(8) Notwithstanding anything contained in the foregoing provisions of this section, sub-section (2) of Section 153-A or sub-section (1) of Section 153-B, **the order of assessment or reassessment, relating to any assessment year, which stands revived under sub-section (2) of Section 153-A, shall be made within a period of one year from the end of the month of such revival or within the period specified in this section or sub-section (1) of Section 153-B, whichever is later."**

5. It was submitted that since the AO has failed to frame a final order of assessment on or before 31 March 2017, there exists no justification for the respondents to retain the amounts which had been



deposited by the petitioner pending finalization of the assessment proceedings.

6. We note that the factum of the AO having not framed a final assessment order pursuant to the judgment of the ITAT dated 31 May 2013 and 14 November 2014 is not disputed by the respondents. That only leaves us to consider whether there would exist any justification for retention of the amounts of which refund is sought.

7. As would be evident from a reading of Section 153(5) of the Act, the same deals with contingencies where the matter may have been remitted by the ITAT to other authorities, including the TPO wholly or in part, for the purposes of making a fresh assessment. Dealing with such a contingency, sub-section (5) of Section 153 of the Act provides that effect to such an order of the ITAT would have to be given within a period of three months from the end of the month in which that order is received. However, and insofar as the present case is concerned, it would clearly be governed by sub-section (7) of Section 153 of the Act since the matter itself relates to an order passed by the authority prior to 1 June 2016.

8. Since the remit ordered by the ITAT, admittedly, was rendered prior to 1 June 2016, it was incumbent upon the AO to have framed a final order of assessment on or before 31 March 2017. Having failed to do so, there would exist no justification for the respondent to retain the amounts which had been deposited by the petitioner.

9. We further take note of the submission of Mr. Chandra, learned counsel for the respondent, who draws our attention to the pendency of appeals preferred by the petitioner against the orders of the ITAT. In our considerate opinion, the mere pendency of those appeals would clearly not detract from the right of the writ petitioner to claim refunds



since those appeals have in any case been rendered infructuous consequent to the period of limitation of framing an order of assessment itself having come to an end.

10. We accordingly allow the instant writ petition and direct the respondents to refund the amounts of INR 31,09,744/- and INR 25,00,000/- along with the interest as may be statutorily payable.

11. We also take on board the statement of learned counsel for the petitioner that in light of the above and since the appeals, i.e., ITA No. 71/2014 and ITA No. 380/2015 have been rendered infructuous, an appropriate application shall be moved for the dismissal of the same in due course.

YASHWANT VARMA, J.

PURUSHAINDR KUMAR KAURAV, J.
FEBRUARY 19, 2024/MJ