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

% *Date of Decision: 26.05.2023*

+ W.P.(C) 7140/2023

TRAVELPORT INTERNATIONAL OPERATIONS LIMITED
UNITED KINGDOM Petitioner

Through: Mr. Piyush Kaushik, Adv.

Versus

COMMISSIONER OF INCOME TAX INTERNATIONAL
TAXATION 3 N.DELHI & ORS. Respondents

Through: Mr. Aseem Chawla, SSC with Mr.
Aditya Gupta, Adv.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 17.11.2022, whereby a sum of ₹6,27,20,736/-, which was payable to the petitioner, was adjusted by the respondents against the demand for a prior period (Assessment Year 2019-20). Intimation for proposing such adjustment under Section 245 of the Income Tax Act, 1961 (hereafter '**the Act**') was issued on 03.11.2022, affording the petitioner a period of thirty days to respond as to why such an adjustment not be made.



2. According to the petitioner, it was impermissible for the respondents to make any such adjustment for the dues pertaining to the Assessment Year 2019-20, as the demand in respect of the said assessment year was stayed in terms of an order dated 22.07.2022, passed by the Income Tax Appellate Tribunal. Further, the petitioner points out that the respondents' online portal on 15.11.2022 also reflected that the said demand was stayed.

3. Notwithstanding that the petitioner was afforded thirty days to respond to the notice why the adjustment of ₹6,27,20,736/- not be made against the demand outstanding for the Assessment Year 2019-20; the respondents had proceeded to adjust the said amount and issued a refund for the balance amount (₹24,94,15,824/-) on 17.11.2021. The petitioner claims that it was entitled to receive the entire refund of ₹31,21,36,560/- without any adjustment under Section 245 of the Act.

4. Mr. Chawla, learned counsel appearing for the respondents, has drawn the attention of this Court to the intimation under Section 143(1) of the Act, which indicates that there was "no response" from the petitioner. The petitioner claims that the said noting is misleading. Mr. Kaushik, learned counsel appearing for the petitioner, submits that the petitioner was, by an intimation dated 03.11.2022, provided a period of thirty days to respond as to why the said adjustment not be made; however, the said adjustment was made prior to the expiry of the period of thirty days.

5. In view of the above, we consider it apposite to set aside the



respondents' action in adjusting a sum of ₹6,27,20,736/- under Section 245 of the Act and remand the matter to the concerned authority to decide afresh, within a period of four weeks from today. The concerned authority shall consider the contents of this petition as the petitioner's response pursuant to the intimation dated 03.11.2022.

6. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

MAY 26, 2023

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