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Relief granted by High Court on errors by revenue while processing withholding tax credit and in granting tax refund

Overview

The Delhi High Court (HC)¹ grants interim relief in a public interest litigation on hardship arising on account of difficulty in receiving credit for tax withheld (WHT) and caused by adjustment of refunds against tax arrears. The HC has given an interim direction that WHT credit should not be denied for small and insignificant mismatches between form 26AS and return of income (RoI). It also held that before rejecting the claim for WHT reflected in form 26AS, the notice for correction of mistake should be served on the assessee. The HC stayed automatic adjustment of demands against the refund payable by the central processing unit (CPU), Bengaluru and directed the income-tax department to issue refunds due with interest.

¹ Court on its own motion v. CIT [TS-677-HC-2012(Del)]

Background

- A letter dated 30 April 2012 was filed with the HC in which problems faced by assessee across the country owing to faulty processing of income-tax returns, and non-grant of WHT credit and refunds, were outlined.
- The HC took judicial notice of the letter, converted it into a public interest petition and directed the Central Board of Direct Taxes (CBDT) to answer each of the allegations as well as other queries the HC raised.
- The department accepted that taxpayers are facing difficulties in receiving credit of WHT and refunds on account of adjustment towards arrears. As an interim measure to provide immediate relief to the assessee, the HC passed the order.

Issue faced by the assesseees

- The HC noticed that the assesseees had been facing difficulties in getting credit of WHT paid. The WHT amount was deducted from the assessee's income but for several reasons not attributable to taxpayers, credit was denied.
- The HC also noticed that the assessee was facing problems pertaining to adjustment of past tax demands or arrears from the refund payable.

The HC order

- The HC issued interim directions to the income-tax department that it should follow the procedure prescribed by section 245² of the Income-tax Act, 1961 (the Act) before making any adjustment of refund payable by the CPU at Bengaluru. The assesseees must be given an opportunity to file a response, and the reply should be considered and examined by the AO before any direction for adjustment is made.
- The process of issue of prior intimation on the assessee should be as per the law.
- The CBDT can fix a time limit for the communication of findings by the AO. The final adjustment should be communicated to the assesseees.
- The HC directed the revenue authority to adopt a just and fair procedure to rectify and correct their records and issue refunds with interest.
- In relation to cases where tax withheld by deductor is not correctly uploaded on tax department portal by the deductor leading to denial of credit of WHT to the taxpayer, the HC made reference to the provisions of section 272BB³ of the Act. The HC observed that the revenue should consider levy of penalty under section 272BB of the Act on the person withholding the tax, if such person has

not correctly provided the WHT details while uploading the WHT return due to which the taxpayer is not allowed WHT credit.

- The HC also directed that small and insignificant mismatches which are purely technical should be condoned or ignored. Once the amount is correctly and rightly reflected in form 26AS, small or technical mismatch in the return should not be a ground to deny credit of the amount paid.
- The HC issued an interim direction stating that in cases where the AO feels that the benefit of WHT reflected in form 26AS should not be given, the AO should issue notice to the assessee to revise or correct the mistake and pass an order under section 143(1) of the Act only if the necessary rectification or correction is not made by the assessee.

PwC comments

It is pertinent to make reference to the noteworthy observation of the Court, viz., *“Denying benefits of TDS to a tax payer because of fault of the deductor, which is not attributable to the deductee, is a serious matter and causes unwarranted harassment and inconvenience. Revenue cannot be a silent spectator and wash their hands or express helplessness.”*

The matter is re-listed for hearing on 2 November 2012. In the interim, the directions given by the HC to the income-tax department to address the above issues is a welcome relief for all taxpayers as the onus is now on the department to inform the assessee before making any adjustment of refund against the tax demand.

² Set-off of refunds against tax remaining payable.

³ Section 272BB of the Act provides for a penalty of Rs. 10,000 for failure on the part of the deductor to correctly upload information in relation to tax withheld.

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