

Imposed fine of INR 50K on the Revenue Authority for illegal recovery of disputed tax demand

The Hon'ble Rajasthan High Court in *Rajendra Kumar v. Assistant Commissioner of Income-tax [D.B. Civil Writ Petition No. 11980 of 2021 dated May 25, 2022]* directed the Revenue Department to issue a refund along with interest in excess of 20% of disputed demand against the assessee. Further, imposed a cost of INR 50,000/- upon the officials involved for non-consideration of appeal in time as well as for not obeying and considering the judgments of the Hon'ble Supreme Court.

Facts:

Mr. Rajendra Kumar ("**the Petitioner**") is a proprietor of M/s Manak Chand Rajendra Kumar engaged in the manufacturing and supply of OMR/OCR/ICR Sheet, Bar Coding, Degree, Exam, Answer Books, Application Form, Question Paper, Exercise Notebooks, Books, Registers, Allied Paper Products.

For the Assessment Year ("**AY**") 2017-18, the AO passed the assessment order ("**the Impugned Order**") demanding INR 2,09,44,100/- under Section 143(3) of the Income Tax Act, 1961 ("**the IT Act**") from the Petitioner. The Petitioner filed an appeal before the CIT(A) contending that demand wasn't maintainable, which was not considered at all.

Later, Income Tax Return for the AY 2018-2019 was processed by the Revenue Department ("**the Respondent**"), wherein, refund of INR 70 lakhs (approx.) for the AY 2018-19 was adjusted against the demand for the AY 2017-18 and an intimation was issued, for which the Petitioner filed an application for stay of demand and requested the Respondent for adjustment of 20% of demand while granted stay, whereby stay on recovery of the balance demand was granted by the Respondent. However, while processing the return for AY

2019-20, the Respondent adjusted the entire demand from refunds to be issued to the Petitioner.

Being aggrieved the Petitioner has filed this writ petition.

The Petitioner contended that they cannot be termed as an 'assessee in default' and the recovery can only be initiated as per the statutory mechanism. Further, as per the departmental circulars, settled position of law, principles of natural justice, statutory mandate and the provisions of Section 245 of the IT Act, set up of refund was made suo-motu and the act of the Respondent was high handed and autocratic without authority of law.

Issue:

Whether the Respondent can adjust the amount of refund against the demand raised for the AY 2017-2018?

Held:

The Hon'ble Rajasthan High Court in ***D.B. Civil Writ Petition No. 11980 of 2021 dated May 25, 2022*** held as under:

- Observed that the Respondent have totally ignored the provisions of law, the judicial pronouncements of higher forum and the action of the Respondent in not considering the appeal in time is against the principles of natural justice, the requirement of law, fair play and therefore, is violative of Article 265 of the Constitution of India.
- Further observed that, the Respondent have failed to honour the principles of judicial discipline, majesty of law and even their action is contrary to their own Circulars, which is against Article 14, 19 and 265 of the Constitution of India.

- Noted that the Petitioner was quite prompt in filing an appeal against the assessment order without waiting for 30 days of the statutory time. However, said appeal wasn't considered.
- Opined that, the present case is a classic example of 'absolute power corrupts absolutely and further noted that when an appeal of the Petitioner is pending and the same is not disposed of for reasons beyond his control, on account of autocratic, lethargy, and administrative constraints on the part of the Respondent, the recovery of demand pending appeal will be an act in terrorem.
- Stated that the Respondent for its own default of not considering the appeal in time even after a lapse of one and half years has initiated recovery violates not only the statutory provisions and the judgments of the higher forums, but even contrary to its own office memorandum which permits recovery only to the extent of 20%.
- Further stated that appropriate departmental action be initiated against the Respondent involved in non-consideration of appeal of the Petitioner in time as well as for not obeying and considering the judgments of the Hon'ble Supreme Court.
- Directed the Respondent to apprise about pendency situation and statistics to the Rajasthan State Legal Services Authority, Jaipur for consideration so that appropriate correspondences can be made with the higher authorities in the larger public interest due to illegal recoveries, levy of interest imposed for the reasons beyond their control.
- Further, directed the Respondent to issue a refund along with interest in excess of 20% of demand.
- Imposed a cost upon the Respondent amounting to INR 50,000/- to be deposited with the Rajasthan State Legal Services Authority, Jaipur and the Petitioner in half and half within two months.

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