IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(T) No. 4910 of 2018

Jay Prakash Singhania, aged about 39 years, son of Shri Bhagwati Prasad Singhania, resident of Singhania Bhawan, 8, J.J. Road, Upper Bazar, P.O. – G.P.O., P.S. Kotwali, Ranchi 834001, District Ranchi (Jharkhand).

... ... Petitioner

Versus

1. The Union of India, through the Principal Chief Commissioner of Income Tax, Central Revenue Building, 1st Floor, Birchand Patel Marg, P.O. – G.P.O., P.S. Kotwali, Patna 800001, District Patna (Bihar).
2. The Principal Commissioner of Income Tax, Central Revenue Building, 5A Main Road, P.O. – G.P.O., P.S. – Chutia, Ranchi 834001, District Ranchi (Jharkhand).

... ... Respondents

CORAM :HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE SUBHASH CHAND

For the Appellant : Mr. Sumeet Gadodia, Advocate.
Mrs. Shilpi Sandil, Advocate
For the Respondents : Mr. Kumar Vaibhav, Advocate.

C.A.V. on 09.02.2023 **Pronounced on 27.02.2023**

Per Sujit Narayan Prasad, J.

The instant writ petition has been listed before this Court by virtue of assignment to the Division Bench No.3 vide order passed in this regard in the administrative side by the Hon'ble the Chief Justice on 14.09.2022 and, thereby the case is before this Court.

2. The instant writ petition is under Article 226 of the Constitution of India praying therein for following reliefs :-

(i) For issuance of an appropriate writ/order/direction including Writ of Mandamus, directing the Respondents, particularly

Respondent No.2 to permit the Petitioner to adjust the amount of Rs.90.00 lacs deposited pursuant to "The Income Declaration Scheme, 2016" against his tax liabilities under the Income Tax Act, 1961.

(ii) For issuance of an appropriate writ/order/direction including Writ of Declaration, declaring that the action of the Respondent-authority in not permitting the Petitioner to adjust an amount of Rs.90.00 lacs deposited pursuant to the Income Declaration Scheme 2016 as wholly arbitrary and in violation of Article 265 of the Constitution of India.

3. The brief facts of the case, as per the pleading made in the writ petition, which are required to be enumerated, reads hereunder as :-

The fact of the case is that the writ petitioner is regular assessee under the Income Tax Department having PAN No.AOJPS8551F. The Government of India has framed a regulation known as the Income Declaration Scheme, 2016, in exercise of power conferred under Section 199 of the Finance Act, 2016, which has been brought in force for declaration of undisclosed income on the basis of the mode and manner stipulated under Section 183 of the aforesaid Act.

Another Section has been provided i.e., Section 187 which provides that the tax, surcharge and penalty payable under the Scheme in respect of undisclosed income was to be paid on or before the dates notified by the Central Government. Sub-Section 3 of Section 187 of the Finance Act, 2016 provides that if a declarant fails to pay the tax, surcharge and penalty in respect of the declaration made under Section 183, the declaration filed by the said applicant shall be deemed never to have been made under this Section.

The writ petitioner has made his declaration in statutory form-1 online before the respondent authority and made declaration of undisclosed income being a sum of 4.00 crores, being an amount of declaration of undisclosed income pertaining to the Assessment Years 2015-16 and 2016-17 of a sum of Rs.1.50 crores and Rs.2.50 crores respectively. On 29th September, 2016, the due acknowledgment of the declaration has been issued to the writ petitioner. The writ petitioner was required to deposit an amount not less than 25% of the total sum payable by the petitioner on or before 30th November, 2016 and, thereafter, an amount not less than 50%, as reduced by the amount paid by the petitioner, was to be deposited by 31st march, 2017 and the balance amount was to be deposited by 30th September, 2017.

The writ petitioner, therefore, was required to deposit an amount to the tune of Rs.45 lacs up to 25th November, 2016,

Rs.45 lacs up to 25th March, 2017 and Rs.90 lacs up to 25th September, 2017.

The writ petitioner has deposited a sum of Rs.45 lacs on or before 30th November, 2016 and, thereafter, deposited further sum of Rs.45 lacs on or before 31st March, 2017 and to that effect e-receipts were issued to the writ petitioner. The writ petitioner although was further required to pay the balance amount of tax, surcharge and penalty of Rs.90 lacs on or before 30th September, 2017 but due to the reasons beyond control of the petitioner, the aforesaid amount could not be deposited on or before 30th September, 2017.

The writ petitioner contended that in terms of the provision of Section 187(3) of the Finance Act, 2016, declaration made by the petitioner will be deemed to have never made as the petitioner failed to deposit the total amount of tax, surcharge and penalty within the time schedule under the Scheme.

The writ petitioner, therefore, has further contended that the natural corollary of non-deposit of the amount in entirety, in view of the provision of Sub-Section 3 of Section 187 of the Finance Act, 2016 will be that such declaration made under Section 183 became *non est* in the eye of law and, therefore, he is entitled for the refund of the aforesaid amount having been deposited up to two instalments on or

before 30th November, 2016 and on or before 31st March, 2017, the total comes to Rs.90 lacs.

The writ petitioner has made such submission on the ground that once the declaration so furnished by the writ petitioner due to non-deposit of the amount in entirety as required under the Finance Act, 2016 will be said to be *non est* in the eye of law due to deeming provision as under Sub-Section 3 of Section 187 of the Finance Act, 2016 and hence the amount which has been retained by the respondent Income Tax Department is nothing but in violation of the provision of Article 265 of the Constitution of India.

The writ petitioner has repeatedly represented for refund of the said amount or its adjustment by filing representations, one of the representation filed on 11th September, 2018 has been appended as Annexure-6 to the writ petition but the grievance has not been redressed, therefore, the instant writ petition has been filed.

4. Mr. Sumeet Gadodia, learned counsel assisted by Mrs. Shilpi Sandil, has submitted that the declaration so made by the writ petitioner, said to have been made in pursuance to the provision of Section 183 of the Finance Act, 2016, since has not been made in entirety as per the requirement of law, therefore, in view of the provision of Sub-Section 3 of Section 187 of the Finance Act, 2016 the declaration will not be said to be a declaration in the eye of law and, therefore, whatever

amount has been deposited by way of two instalments, is to be refunded or adjusted.

It has been submitted that the respondents, after amount having not been deposited in the entirety as per the declaration, has taken recourse of the provision of Section 147 and 153A of the Income Tax Act and has recovered the amount as per the liability of the writ petitioner. Therefore, submission has been made that once the entire liability on the basis of the assessment so made under the provision of Income Tax Act, 1961 has been paid, there is no reason for the respondent Income Tax Department to retain excess money which is excess to the liability as assessed by taking recourse of the provision of Section 147 followed by Section 153A of the Income Tax Act, 1961.

He, in order to demonstrate his liability, has stated by filing supplementary affidavit on 21.08.2020 that a search and seizure operation under Section 132 of the Income Tax Act, 1961 has been conducted in the premises of the writ petitioner and in pursuance thereto the petitioner was issued notice under Section 153A of the Income Tax Act for filing true and correct returns for the preceding six assessment years. Separate notices were issued for each assessment years including the assessment year 2015-16 and 2016-17.

The petitioner, in pursuance thereto, has filed its revised return and in the said revised return, undisclosed

income under Income Declaration Scheme, 2016, was duly reflected i.e. for the assessment year 2015-16, an additional income of Rs.1.5 Crores was reflected and further for the year 2016-17, an additional income of Rs.2.50 Crores was declared by the petitioner.

It has further been submitted that for the Assessment Year 2015-16 and 2016-17, assessment proceeding under Section 143(3) read with Section 153A of the Income Tax Act was duly completed by the Assessing Authority and revised returns filed by the petitioner disclosing further income of Rs.1.5 Crores and 2.5 Crores respectively were accepted and computation of tax was made on the basis of said further income disclosed by the petitioner in its revised return.

The petitioner, in the aforesaid background, has submitted that once the liability which has been shown by the own declaration made by the petitioner about the undisclosed income for the assessment years 2015-16 to the tune of Rs.1.50 crores and Rs.2.50 crores for the assessment year 2016-17 since has been assessed and the returns have also been filed which have been accepted, therefore, there is no reason for the respondent Income Tax Department to keep the money with them.

It has been submitted that the provision as contained under Sub-Section 3 of Section 187 however provides that in pursuance to the declaration if the amount in entirety, has

not been paid, the same will be said to be not a declaration under the provision of Section 183 since the condition *sine qua non* for considering the declaration to be a declaration in the eye of law only when the amount in entirety will be paid within the schedule date.

Here, since the third instalment has not been paid and, as such, the declaration said to have been made by the writ petitioner will be said to be *non est* in the eye of law in view of the implication of the provision of Sub-Section 3 of Section 187 of the Finance Act, 2016 and, hence, the respondent Income Tax Department is required to refund the amount in favour of the petitioner.

It has been submitted that coupled with that legal position applicable in the given facts of the case, since the Income Tax Department has taken recourse after non-deposit of the amount in entirety in pursuance to the declaration given by the petitioner under Section 147 followed by Section 132 and Section 153A of the Income Tax Act, 1961 and in pursuance thereto return for the entire liability for the assessment year 2015-16 and 2016-17 to the tune of Rs.1.5 crore and Rs.2.5 crore respectively has already been filed and the same has been accepted which itself suggests that the petitioner is having no liability to make payment of Income Tax pertaining to the assessment years 2015-16 and 2016-17 and in that view of the matter also since the entire liability of

the writ petitioner of filing revised return of the escape income for the said period has been accepted, there is no reason for the Income Tax Department to retain the money as was paid by the petitioner in view of the provision of Section 183 of the Act, 2016.

Learned counsel for the petitioner has relied upon the judgment rendered by Hon'ble Apex Court in the case of ***Hemalatha Gargya v. Commissioner of Income Tax, A.P. and Another*** reported in ***(2003) 9 SCC 510***, the judgment rendered by the High Court of Andhra Pradesh passed in Writ Petition No.13506 of 1999 dated 8th September, 1999 in the case of ***Patchala Seethramaiah v. Commissioner of Income Tax, Vijayawada and Ors.*** and the judgment rendered by the High Court of Madhya Pradesh in the case of ***Smt. Sangeeta Agarwal v. Principal Commissioner of Income Tax (W.P. No.16028 of 2018)*** reported in ***(2018) 96 taxmann.com 171 (Madhya Pradesh)***.

It has been contended that the Hon'ble Apex Court in the case of ***Hemalatha Gargya v. Commissioner of Income Tax, A.P. and Another*** (Supra) while considering Section 67 of Voluntary Disclosure of Income Scheme, 1997 which provides the time for payment fixed can be extended, however, the Hon'ble Apex Court has been pleased to hold that the time cannot be extended and thereby held the assessee not entitled to the benefit of the Scheme since the

payments made by them were not in terms of the Scheme. However, direction has been passed upon the Revenue authorities to refund or adjust the amount already deposited by the assessee in purported compliance of the provision of Scheme to the assessee concerned in accordance with law.

Similar view has been taken by the Andhra Pradesh High Court in the judgment rendered in the case of ***Patchala Seethramaiah v. Commissioner of Income Tax, Vijayawada and Ors.*** (Supra) and the Madhya Pradesh High Court in the judgment rendered in the case of ***Smt. Sangeeta Agarwal v. Principal Commissioner of Income Tax*** (Supra).

Mr. Gadodia has also referred a judgment passed by Gujarat High Court in the case of ***Yogesh Roshanlal Gupta v. Central Board of Direct Taxes (R/Special Civil Application No.2148 of 2019)*** wherein different view has been taken from the judgment passed by Hon'ble Apex Court in the case of ***Hemalatha Gargya v. Commissioner of Income Tax, A.P. and Another*** (Supra) and by the Andhra Pradesh High Court and Madhya Pradesh High Court in ***Patchala Seethramaiah v. Commissioner of Income Tax, Vijayawada and Ors.*** (Supra) and ***Smt. Sangeeta Agarwal v. Principal Commissioner of Income Tax*** (Supra) respectively on the ground that in the scheme of 1997 there was no provision whereby the Revenue could retain the tax so

paid in respect of a declaration which was void and *non est* but in the Scheme of 2016, there is specific provision as contained under Section 190 of the Finance Act, 2016. The matter travelled to the Hon'ble Apex Court wherein the civil appeal has been disposed of by directing in the peculiar facts and circumstances of the case to refund the amount deposited towards first two instalments by reckoning the tax liability of the appellants after revised assessment.

Mr. Gadodia, in the backdrop of the aforesaid legal issues and the judgment pronounced by Hon'ble Apex Court and the Andhra Pradesh High Court and Madhya Pradesh High Court, has submitted that herein also a direction is required to be given to the Income Tax Department for refund or adjustment of the amount so deposited.

He has further submitted that since the respondent Income Tax Department has retained the money without any authority of law and, as such, the petitioner is entitled for refund along with due interest.

5. Per contra, Mr. Kumar Vaibhav, learned counsel appearing for the Revenue, has submitted that the writ petition is having no merit due to the reason that once the petitioner has given declaration regarding his escape income by taking recourse of the provision of Section 183 of the Finance Act, 2016 and in pursuance thereto, he was to deposit the amount in entirety in three instalments within the

due date. But, he has deposited two instalments and third instalment has not been deposited.

It has been submitted by referring to the provision of Section 191 of the Finance Act, 2016 wherein specific provision has been made that any amount of tax and surcharge paid under Section 184 or penalty paid under Section 185 in pursuance of a declaration made under Section 183 shall not be refundable. Therefore, submission has been made that in view of specific provision as contained under Section 191 barring the refund of the amount deposited in pursuance to the declaration made under Section 183, the petitioner cannot be held entitled for the refund.

The further submission has been made in response to the argument that the entire amount which has been assessed by taking recourse of Section 132 read with Section 153A of the Income Tax Act, 1961 even then the amount so deposited in view of declaration made under Section 183 of the Finance Act, 2016 is not to be refunded in view of the provision as contained under Section 191 of the Finance Act, 2016.

He has further submitted that the judgments upon which reliance has been placed rendered by Hon'ble Apex Court in the case of ***Hemalatha Gargya v. Commissioner of Income Tax, A.P. and Another*** (Supra) and by the Andhra

Pradesh High Court and Madhya Pradesh High Court in ***Patchala Seethramaiah v. Commissioner of Income Tax, Vijayawada and Ors.*** (Supra) and ***Smt. Sangeeta Agarwal v. Principal Commissioner of Income Tax*** (Supra), are not applicable in the facts of the given case herein since, the said judgments have been passed by the Hon'ble Apex Court and the concerned High Courts on the basis of the Scheme 1997 where there is no express provision of not to refund the amount so deposited by virtue of declaration but herein, there is express provision in this regard under Section 191.

He, therefore, has submitted that in the facts of the give case, the judgment rendered by Gujarat High Court in the case of ***Yogesh Roshanlal Gupta v. Central Board of Direct Taxes*** (Supra) will be applicable.

6. We have heard learned counsel for the parties, perused the documents available on record as also the Income Declaration Scheme, 2016.

7. The core issue which requires consideration and answer of this Court is –

(i) Whether the petitioner is entitled for refund/adjustment of the amount deposited in pursuance to the declaration made under Section 183 of the Finance Act, 2016?

(ii) Whether in a fact where the amount so assessed for the assessment years 2015-16 and 2016-17 has been paid by the petitioner after taking recourse of the Income Tax Department

under Section 132 and 153A of the Income Tax Act, 1961 even then retention of the amount so deposited by virtue of the provision of Section 183 of the Finance Act, 2016 can be allowed to be retained?

(iii) Whether the amount so deposited in view of the declaration made under Section 183 of the Finance Act, 2016 if allowed to be retained by the Income Tax Department even after revised return having been filed with respect to the assessment years 2015-16 and 2016-17, will it not allow the Income Tax Department to retain the amount so deposited by the petitioner exceeding the assessment and the liability of the petitioner and will it not be considered to be excess of jurisdiction by the Income Tax Department?

8. All the issues since are inter-linked, therefore, this Court is proceeding to answer the same after considering the statutory provisions and the judgments upon which reliance has been placed.

The Income Tax Act, 1961 contains a provision as under Chapter XIV – Procedure for Assessment wherein Section 139 provides the process of return of income.

By virtue of the aforesaid provision, every person being a company or firm or being a person, is required to furnish return of his income in respect of which he is assessable under this Act.

The other provisions are there as contained under Sub-Section 4 thereof which provides that any person who has not furnished a return within the time allowed to him under sub-section (1), may furnish the return for any previous year at any time before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

Section 143 provides that where a return has been made under section 139, or in response to a notice under Sub-section (1) of Section 142, such return shall be processed in the manner as contained in the aforesaid Section and where a return has been furnished under section 139, or in response to a notice under Sub-section (1) of Section 142, the Assessing Officer or the prescribed income-tax authority, if, considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, shall serve on the assessee a notice requiring him, on a date to be specified therein, either to attend the office of the Assessing Officer or to produce, or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return.

Thereafter, the provisions have been made for the consideration of the objection and taking final decision subject to appeal before the higher authorities.

Section 147 provides provision pertaining to income escaping assessment. The aforesaid provision is to be made applicable if any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment years, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year.

The Act, 1961 further provides the provision as contained under Section 153A which is for assessment in case of search or requisition. If the aforesaid Section will be read together, the purpose of the aforesaid Sections first requiring the assessee to submit its return, as would appear from the provision of Section 139, subject to scrutiny under Section 143 and even if the return has not been submitted, then the Revenue can take recourse of the provision of Section 147 and even then the assessment has not been truly disclosed, then the true disclosure can be obtained by the authority by taking recourse of the provision of Section 153A of the Act, 1961.

The Central Government has come out with a scheme first in the year 1997 to be known as "*The Voluntary Disclosure of Income Scheme, 1997*" which contains a provision under Section 67 wherein it has been provided that if the declarant fails to pay the tax in respect of the

voluntarily disclosed income before the expiry of three months from the date of filing of the declaration, the declaration filed by him shall be deemed never to have been made under this Scheme. For ready reference, the provision of Section 67 is being referred hereunder as:-

> "**67. Interest payable by declarant**
> (1) Notwithstanding anything contained in section 66, the declarant may file a declaration without paying the tax under that section and the declarant may file the declaration and the declarant may pay the tax within three months from the date of filing of the declaration with simple interest at the rate of two per cent for every month or part of a month comprised in the period beginning from the date of filing the declaration and ending on the date of payment of such tax and file the proof of such payment within the said period of three months.
> (2) If the declarant fails to pay the tax in respect of the voluntarily disclosed income before the expiry of three months from the date of filing of the declaration, the declaration filed by him shall be deemed never to have been made under this Scheme."

Section 70 thereof provides that any amount of tax paid in pursuance of a declaration made under Sub-section(1) of Section 64 shall not be refundable under any circumstances.

In the year 2016, "The Income Declaration Scheme, 2016" has been brought in force which contains a provision under Section 183 for giving a declaration by the assessee who has failed to furnish a return under Section 139 of the Income Tax Act; if he has failed to disclose in a return of

income furnished by him under the Income Tax Act before the date of commencement of the Scheme; if the assessee has escaped assessment by reason of the omission or failure on the part of such person to furnish a return under the Income Tax Act or to disclose fully and truly all material facts necessary for the assessment or otherwise, for ready reference, the provision of Section 183 is being referred hereunder as :-

> "**Declaration of undisclosed income.**
>
> **183** . (1) Subject to the provisions of this Scheme, any person may make, on or after the date of commencement of this Scheme but before a date to be notified by the Central Government in the Official Gazette, a declaration in respect of any income chargeable to tax under the Income-tax Act for any assessment year prior to the assessment year beginning on the 1st day of April, 2017—
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> (a) for which he has failed to furnish a return under section 139 of the Income-tax Act;
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> (b) which he has failed to disclose in a return of income furnished by him under the Income-tax Act before the date of commencement of this Scheme;
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> (c) which has escaped assessment by reason of the omission or failure on the part of such person to furnish a return under the Income-tax Act or to disclose fully and truly all material facts necessary for the assessment or otherwise.
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> (2) Where the income chargeable to tax is declared in the form of investment in any asset, the fair market value of such asset as on the date of commencement of this Scheme shall be deemed to be the undisclosed income for the purposes of sub-section (1).
>
> (3) The fair market value of any asset shall be determined in such manner, as may be prescribed.

(4) No deduction in respect of any expenditure or allowance shall be allowed against the income in respect of which declaration under this section is made."

Section 184 provides that the undisclosed income declared under section 183 within the time specified therein shall be chargeable to tax at the rate of thirty per cent of such undisclosed income, for ready reference, the provision of Section 184 is being referred hereunder as :-

"Charge of tax and surcharge.

184 . (1) Notwithstanding anything contained in the Income-tax Act or in any Finance Act, the undisclosed income declared under section 183 within the time specified therein shall be chargeable to tax at the rate of thirty per cent of such undisclosed income.

(2) The amount of tax chargeable under sub-section (1) shall be increased by a surcharge, for the purposes of the Union, to be called the *Krishi Kalyan Cess* on tax calculated at the rate of twenty-five per cent of such tax so as to fulfil the commitment of the Government for the welfare of the farmers."

Section 187 provides time for payment of tax under which provision has been inserted as under Sub-section 3 thereof that if the declarant fails to pay the tax, surcharge and penalty in respect of the declaration made under Section 183 on or before the date specified under Sub-section (1), the declaration filed by him shall be deemed never to have been made under this Scheme, for ready reference, the provision of Section 187 is being referred hereunder as :-

> **"Time for payment of tax.**
>
> **187.** (1) The tax and surcharge payable under section 184 and penalty payable under section 185 in respect of the undisclosed income, shall be paid on or before a date to be notified[1] by the Central Government in the Official Gazette.
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> [2][**Provided** *that where the amount of tax, surcharge and penalty, has not been paid within the due date notified under this sub-section, the Central Government may, by notification in the Official Gazette, specify the class of persons, who may, make the payment of such amount on or before such date as may be notified by the Central Government, along with the interest on such amount, at the rate of one per cent for every month or part of a month comprised in the period commencing on the date immediately following the due date and ending on the date of such payment.*]
>
> (2) The declarant shall file the proof of payment of tax, surcharge and penalty on or before the date notified under sub-section (1), with the Principal Commissioner or the Commissioner, as the case may be, before whom the declaration under section 183 was made.
>
> (3) If the declarant fails to pay the tax, surcharge and penalty in respect of the declaration made under section 183 on or before the date specified under sub-section (1), the declaration filed by him shall be deemed never to have been made under this Scheme."

9. This Court, after going through the Income Declaration Scheme, 2016 and the Voluntary Disclosure of Income Scheme, 1997, has found therefrom that the provision of Section 67(2) of the Voluntary Disclosure of Income Scheme, 1997 is *pari materia* to Section 187(3) of the Income

Declaration Scheme, 2016 and the provision as contained under Section 70 of the Voluntary Disclosure of Income Scheme, 1997 is *pari materia* to Section 191 of the Income Declaration Scheme, 2016.

10. This Court, on consideration of the judgment rendered by Hon'ble Apex Court in the case of ***Hemalatha Gargya v. Commissioner of Income Tax, A.P. and Another*** (Supra) where the consideration has been given on the issue of refund on the basis of the amount having not been deposited in entirety by way of declaration made under Section 67 and even when the specific bar is there not to refund in view of provision of Section 70, the direction has been passed for refund of the amount in favour of the assessee, as would appear from paragraph 18 of the judgment which reads hereunder as :-

> "**18.** As a consequence, in our view, the appeals preferred by the assessees must be and are hereby dismissed whereas the appeals preferred by the Revenue Authorities must be and are hereby allowed. However, having held that the assessees are not entitled to the benefit of the Scheme since the payments made by them were not in terms of the Scheme, we direct the Revenue Authorities to refund or adjust the amounts already deposited by the assessees in purported compliance with the provisions of the Scheme to the assessees concerned in accordance with law. All the appeals are accordingly disposed of without any order as to costs."

The same principle has been adopted by the Andhra Pradesh High Court in the case of ***Patchala Seethramaiah v. Commissioner of Income Tax, Vijayawada and Ors.*** (Supra) and Madhya Pradesh High Court in ***Smt. Sangeeta Agarwal v. Principal Commissioner of Income Tax*** (Supra) by putting reliance upon the judgment rendered by Hon'ble Apex Court in the case of ***Hemalatha Gargya v. Commissioner of Income Tax, A.P. and Another*** (Supra).

The Gujarat High Court, in the case of ***Yogesh Roshanlal Gupta v. Central Board of Direct Taxes*** (Supra), however, has taken a contrary view by distinguishing the judgment passed by Andhra Pradesh High Court wherein the view has been expressed that in absence of any such authority of law, the retention of amount contrary to the very Scheme was in the teeth of Article 265 of the Constitution of India and, therefore, the Gujarat High Court has come to the conclusion by negating the claim of the writ applicant for adjusting of the amount already deposited.

The judgment passed by the Gujarat High Court has travelled to the Hon'ble Apex Court and the Hon'ble Apex Court in the peculiar facts of the case, has directed for refund of the amount so deposited.

There is no dispute that the judgment passed by Hon'ble Apex Court is having binding effect in view of the provision of Article 141 of the Constitution of India. The aforesaid

judgment has been followed by the Madhya Pradesh High Court directing for refund even if there is provision under Section 70 of the Scheme of 1997. However, the Gujarat High Court has differed with the view and has held the applicant not entitled for refund.

The judgment passed by Madhya Pradesh High Court is based upon the judgment passed by Hon'ble Apex Court.

11. This Court is now proceeding to examine in the facts of the given case that the writ petitioner can be held entitled of refund or adjustment of the amount so deposited even if due to the effect of the provision of Section 191 of the Scheme, 2016 which is the thrust of the argument on behalf of the Revenue.

12. This Court, after going through the provision as contained under Section 70 of the Scheme, 1997, has found that a pari material provision is there in the Scheme, 2016 by way of Section 191. The Hon'ble Apex Court, after taking into consideration the implication of the provision of Section 70 of the Scheme, 1997, however, has refused to extend the period of depositing the amount under Section 67 of the Scheme, 1997 but simultaneously has directed to refund the said amount in favour of the said assessee.

The fact of the judgment passed by Hon'ble Apex Court in the case of ***Hemalatha Gargya v. Commissioner of Income Tax, A.P. and Another*** (Supra) or Andhra Pradesh

High Court in the case of ***Patchala Seethramaiah v. Commissioner of Income Tax, Vijayawada and Ors.*** (Supra) and Madhya Pradesh High Court in ***Smt. Sangeeta Agarwal v. Principal Commissioner of Income Tax*** (Supra) and the direction passed by Hon'ble Apex Court while considering the judgment passed by Gujarat High Court, directed to refund the amount in the peculiar facts of the case are concerned, the amount has been directed to be refunded even though the fact about the acceptance of return is not available in these cases which is the fact of the given case.

Herein, it is the admitted fact that the Revenue has taken recourse of Section 132 and 153A and issued notices to the assessee for the assessment year 2015-16 and 2016-17, assessing the income of the assessee to the tune of Rs.1.5 crore and Rs.2.5 crore respectively which is the subject matter of the declaration given by the writ petitioner and thereafter the return has been filed and same has been accepted, as would appear from the stand taken by the writ petitioner in the supplementary affidavit dated 21.08.2020 as under paragraphs 4, 5 and 6 thereof.

The aforesaid aspect of the matter has not been disputed, rather, the learned counsel for the Income Tax Department, in course of argument, has admitted the fact that the assessment was made for the assessment years

2015-16 and 2016-17 basis upon which the return filed by the assessee, has been accepted. Therefore, the return which ought to have been filed by the assessee although has not been filed at the time when it was filed i.e., at the stage of filing return in view of the provision of Section 139 but subsequent thereto, when the Income Tax Department has taken recourse of the provision of Section 153A then the return has been filed on the basis of assessment so made by the authority, therefore, it is not the case of the Revenue and it cannot be since the return on the basis of the steps taken in pursuance to the provision of section 153A of the Act, 1961 has already been accepted.

Therefore, the question would be that once the return so filed by the writ petitioner although not at the time of filing return in view of the provision of Section 139 but subsequent thereto i.e., when the recourse has been taken by the Income Tax Department under the provision of Section 153A clearing its liability so far as assessment for the assessment year 2015-16 and 2016-17 is concerned. Thereafter, retaining the amount which has been deposited by the writ petitioner by way of self-declaration given in view of the provision of Section 183 of the Act, 2016, according to our considered view will be arbitrary exercise of the respondent authority.

13. The Hon'ble Apex Court while taking into consideration the provision of Section 67 read with Section 70 of the

Scheme 1997, even in absence of the fact about furnishing the return, at the subsequent stage, has directed to refund the amount, as would appear from paragraph 18 of the said judgment, while herein, the admitted fact of the case is that the return for the assessment year 2015-16 and 2016-17 has already been filed and accepted. Therefore, the ground which has been taken that the amount since has been deposited by way of declaration made under Section 183 contained in the Finance Act, 2016, which contains a provision under Section 191 for not refunding the amount so deposited in any circumstances will be applicable over and above the return filed and accepted by the respondent Income Tax Department. But the said argument is not acceptable to this Court for two reasons, first, on the similar provision as was contained in Section 70 of the Scheme 1997 when the Hon'ble Apex Court has been pleased to direct for refund of amount then it is not available for the Income Tax Department to take this ground negating the claim of assessee/writ petitioner merely on the ground that the provision of Section 191 debars from making refund of the amount.

14. The second reason that the respondent Income Tax Department cannot be said to act contrary to its action after accepting the return filed for the assessment year 2015-16 and 2016-17, meaning thereby, that the liability of the writ

petitioner of filing return for the aforesaid assessment year is no more and once it is no more, there is no authority of the Income Tax Department to retain the amount and retaining the said amount will be said to be in the teeth of provision of Article 265 of the Constitution of India.

15. Accordingly and in the facts and circumstances of the case, this Court is of the view that the writ petition deserves to be allowed.

16. Accordingly, the writ petition stands allowed. The amount so deposited by the writ petitioner under the Scheme, 2016 is directed to be adjusted in the future assessment.

17. Mr. Sumeet Gadodia, learned counsel appearing for the petitioner, has submitted that the petitioner is also entitled for the interest over the amount retained. In this context, Mr. Gadodia has relied upon the judgment passed by Hon'ble Apex Court in the case of ***Union of India through Director of Income Tax v. Tata Chemicals Limited*** reported in ***(2014) 16 SCC 335***.

18. Serious objection has been made on behalf of learned counsel appearing for the respondent that there is no prayer made in the writ petition to that effect.

19. We have considered the submission made on behalf of the parties on the issue.

The ground has been taken that there is no specific prayer pertaining to the interest, as would be evident from

the prayer made in the writ petition and it is the settled position of law that in the writ petition if there is no prayer, there cannot be any direction under Article 226 of the Constitution of India as has been held by Hon'ble Apex Court in the case of ***State of Madhya Pradesh and Another v. Kedia Great Galeon Limited and Another*** reported in ***(2017) 13 SCC 836***, at paragraph 38 which is quoted and referred as under :-

> "38. ... ... We are, thus, of the considered opinion that the something which the writ petitioner never intended or prayed for cannot be looked into in this appeal."

20. However, this Court deems it fit and proper to decide this issue also since this has been raised on behalf of the parties and, therefore, proceeding to decide.

21. The provisions related to interest on the Income Tax refund is contained in Section 244A of the Act. The provisions of Section 244A of the Act have been introduced by the Direct Tax Laws Act, 1987 (as amended by Direct Tax Laws Amendment Act, 1989) with effect from 01.04.1989 and were made applicable from the assessment year 1989-90.

The provisions of Section 214 relating to interest payable by the Government on the excess amount of advance tax paid by the assessee has been replaced with effect from assessment year 1989-90 by the provisions of new Section

244A which provides for interest payable by the Government on all refunds.

The Section 244 A thus was inserted in the statute to ensure that the assessee is duly compensated by the Government by way of payment of interest legitimately belonging to the assessee wrongfully retained by the Government. Where any amount of refund becomes due to the assessee, such amount of income tax refund is liable to be refunded to the assessee with interest, as per the following provisions of the Act :-

(i) Refund of excess amount of tax due to the assessee on account of advance payment of tax or TDS/TCS, in such circumstances, the refund of tax is due to the assessee out of any tax collected at source under Section 206-C or paid by way of advance tax or treated as paid under Section 199, during the financial year immediately preceding the assessment year.

(ii) Under Section 244A(1)(a) an assessee is entitled to receive interest on refund of any tax collected at source, tax deducted at source or advance tax paid. Clause (b) of Section 244A(1) provides that in case the refund is out of any other amount, interest shall be calculated for the period from the date of payment of tax or penalty to which the refund is granted.

(iii) Interest on refund of TDS in view of the provision of Section 244A(1B).

(iv) In view of Section 244A (1)(A)/(1)(1B) if any proceeding is going on against the assessee and at the end or conclusion of the proceeding any refund amount is due to the assessee and the proceeding was delayed due to the fault of the assessee, then the period of delay so attributable to the assessee shall be excluded from the period for which the interest is payable.

Reference in this context be made to the judgment rendered by Hon'ble Apex Court in the case of ***Union of India through Director of Income Tax v. Tata Chemicals Limited*** (Supra).

22. The question of holding the petitioner entitled for the interest will only be answered in favour of the petitioner if there is bona fide on his part. Admittedly, this Court has gathered from the facts available that the petitioner has not submitted the return as per his liability and, therefore, he has availed the opportunity to give disclosure under Section 183 of the Scheme, 2016. This conduct of the petitioner shows the intention that somehow the petitioner wanted to suppress his income by filing return. He, however, has deposited two instalments but third instalment was not deposited by him. This further shows the conduct of the petitioner that he has not stick to the statutory provision as

contained under Section 139 of the Income Tax Act, 1961 specially the duty casted upon the assessee under the provision of Section 139 of the Income Tax Act, 1961.

Although reliance has been placed upon the judgment rendered in the case of ***Union of India through Director of Income Tax v. Tata Chemicals Limited*** (Supra) but it is settled position of law that applicability of judgment is to be seen on the basis of the facts and circumstances of the given case as has been held by the Hon'ble Apex Court in the case of ***Dr. Subramanian Swamy vs. State of Tamil Nadu and Others, (2014) 5 SCC 75***, paragraph 47 of which reads hereunder as:

> "47. It is a settled legal proposition that the ratio of any decision must be understood in the background of the facts of that case and the case is only an authority for what it actually decides, and not what logically follows from it. "The court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed."

23. We, on the basis of the aforesaid position, have considered the judgment rendered in the case of ***Union of India through Director of Income Tax v. Tata Chemicals Limited*** (Supra) wherein the issue involved pertains to refund becomes due when tax deducted at source, advance tax paid, self-assessment tax paid and tax paid on regular assessment exceeds tax chargeable for the year as a result of

an order passed in appeal or other proceedings under the Income Tax Act. Therefore, the facts governing the said case is that if the tax has been deposited at source or advance tax has been paid or the tax has been paid by way of self-assessment or tax has been paid on regular assessment exceeds tax chargeable then there will be refund by the Income Tax Department and in that pretext the refund will be accompanied with the interest.

The aforesaid fact does suggest that in case of only *bona fide* approach of the assessee if the tax so deposited exceeds the tax chargeable for the year then only the question of payment of interest along with refund will arise.

The Hon'ble Apex Court in ***Union of India through Director of Income Tax v. Tata Chemicals Limited*** (Supra) where the issue arose as the quantum of tax deducted consequent to the order passed by the Assessing Officer directing it to deduct tax on amounts being remitted abroad, it was found in appeal that the payments made were in the nature of reimbursement and, therefore, not a part of income of the party to whom it is being remitted for the purpose of deduction of tax at source. Therefore, Tata Chemicals Limited sought refund of amount paid in excess along with interest thereof.

The Hon'ble Apex Court granted while making the following observations with regard to liability to pay tax; "tax

refund" is a refund of taxes when the tax liability is less than the tax paid. As per the old section an assessee was entitled for payment of interest on the amount of taxes refunded pursuant to an order passed under the Act, including the order passed in an appeal.

The Hon'ble Apex Court by taking the fact involved therein has held that the deductor/assessee had paid taxes pursuant to a special order passed by the assessing officer/Income Tax Officer. In the appeal filed against the said order the assessee has succeeded and a direction is issued by the appellate authority to refund the tax paid. The amount paid by the resident/deductor was retained by the Government till a direction was issued by the appellate authority to refund the same. When the said amount is refunded it should carry interest in the matter of course. As held by Hon'ble Apex Court while awarding interest, it is a kind of compensation of use and retention of the money collected unauthorisedly by the Department. When the collection is illegal, there is corresponding obligation on the Revenue to refund such amount with interest inasmuch as they have retained and enjoyed the money deposited. Even the object behind insertion of Section 244-A, that an assessee is entitled to payment of interest for money remaining with the Government which would be refunded. There is no reason to restrict the same to an assessee only without extending the

similar benefit to a resident/deductor who has deducted tax at source and deposited the same before remitting the amount payable to a non-resident/foreign company.

Providing for payment of interest in case of refund of amounts paid as tax or deemed tax or advance tax is a method has statutorily been adopted by fiscal legislation to ensure that the aforesaid amount of tax which has been duly paid in prescribed time and provisions in that behalf form part of the recovery machinery provided in a taxing statute. Refund due and payable to the assessee is debt-owed and payable by the Revenue. The Government, there-being no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, cannot shrug off its apparent obligation to reimburse the deductors lawful monies with the accrued interest for the period of undue retention of such monies. The State having received the money without right, and having retained and used it, is bound to make the party good, just as an individual would be under like circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest. Whenever money has been received by a party which *ex ae quo et bono* ought to be refunded, the right to interest follows, as a matter of course.

Therefore, the refund of tax along with interest in favour of the assessee will be only in a case if the tax paid either as advance tax or on self-assessment, in order to discharge the obligation under the Act. Not complying the obligation under the Act, gives consequences to an assessee just as non-compliance or an order passed by the authority under the Act. Thus, if there is no voluntary payment of tax on self-assessment and in that circumstances, there is no question of making payment of interest to the assessee.

The relevant paragraph of the judgment rendered in ***Union of India through Director of Income Tax v. Tata Chemicals Limited*** (Supra) is referred and quoted hereunder as :-

> **30.** The refund becomes due when tax deducted at source, advance tax paid, self-assessment tax paid and tax paid on regular assessment exceeds tax chargeable for the year as a result of an order passed in appeal or other proceedings under the Act. When refund is of any advance tax (including tax deducted/collected at source), interest is payable for the period starting from the first day of the assessment year to the date of grant of refund. No interest is, however, payable if the excess payment is less than 10 per cent of tax determined under Section 143(1) or on regular assessment. No interest is payable for the period for which the proceedings resulting in the refund are delayed for the reasons attributable to the assessee (wholly or partly). The rate of interest and entitlement to interest on excess tax are determined by the

statutory provisions of the Act. Interest payment is a statutory obligation and non-discretionary in nature to the assessee. In tune with the aforesaid general principle, Section 244-A is drafted and enacted. The language employed in Section 244-A of the Act is clear and plain. It grants substantive right of interest and is not procedural. The principles for grant of interest are the same as under the provisions of Section 244 applicable to assessments before 1-4-1989, albeit with clarity of application as contained in Section 244-A.

37. A "tax refund" is a refund of taxes when the tax liability is less than the tax paid. As per the old section an assessee was entitled for payment of interest on the amount of taxes refunded pursuant to an order passed under the Act, including the order passed in an appeal. In the present fact scenario, the deductor/assessee had paid taxes pursuant to a special order passed by the assessing officer/Income Tax Officer. In the appeal filed against the said order the assessee has succeeded and a direction is issued by the appellate authority to refund the tax paid. The amount paid by the resident/deductor was retained by the Government till a direction was issued by the appellate authority to refund the same. When the said amount is refunded it should carry interest in the matter of course. As held by the Courts while awarding interest, it is a kind of compensation of use and retention of the money collected unauthorisedly by the Department. When the collection is illegal, there is corresponding obligation on the Revenue to refund such amount with interest inasmuch as they have retained and enjoyed the money deposited. Even the Department has understood the object behind insertion of Section 244-A, as that, an assessee is entitled to payment of interest for money remaining with the Government which

> would be refunded. There is no reason to restrict the same to an assessee only without extending the similar benefit to a resident/deductor who has deducted tax at source and deposited the same before remitting the amount payable to a non-resident/foreign company.
>
> **38.** Providing for payment of interest in case of refund of amounts paid as tax or deemed tax or advance tax is a method now statutorily adopted by fiscal legislation to ensure that the aforesaid amount of tax which has been duly paid in prescribed time and provisions in that behalf form part of the recovery machinery provided in a taxing statute. Refund due and payable to the assessee is debt-owed and payable by the Revenue. The Government, there-being no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, cannot shrug off its apparent obligation to reimburse the deductors lawful monies with the accrued interest for the period of undue retention of such monies. The State having received the money without right, and having retained and used it, is bound to make the party good, just as an individual would be under like circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest. Whenever money has been received by a party which *ex ae quo et bono* ought to be refunded, the right to interest follows, as a matter of course.

Here in the given facts of the case, it is not the case of the petitioner that he has paid the tax at source or paid the tax advance tax. However, the case of the petitioner is that he has paid the tax on self-assessment i.e., under the provision of Section 183 but his conduct of giving declaration itself

suggest and shows that the self-assessment shown by the petitioner is not found to be in accordance with law and that is the reason the declaration to that effect has been given and that ultimately led to assessing the assessee by taking recourse of the provision of Section 153A of the Act, 1961.

24. This Court, in view of the facts of the given case, is of the view that the conduct of the petitioner cannot be considered to be proper for issuance of a direction for payment of interest in favour of the writ petitioner even if this Court has directed for adjustment of the amount so deposited.

25. Accordingly, the prayer for interest is hereby rejected.

26. In the result, the instant writ petition stands disposed of with the aforesaid direction.

27. Pending Interlocutory Application(s), if any, also stand(s) disposed of.

(Sujit Narayan Prasad, J.)

I agree

(Subhash Chand, J.) **(Subhash Chand, J.)**

Birendra/**A.F.R.**