IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 31ST DAY OF JULY 2014

BEFORE

THE HON'BLE MRS JUSTICE B.V. NAGARATHNA

WRIT PETITION Nos. 10263 & 10264/2014 (T-IT)

BETWEEN

M/S. PAGE INDUSTRIES LTD.,
ABBAIAH REDDY INDUSTRIAL AREA,
JOCKEY CAMPUS, 6/2 & 6/4,
HONGASANDRA, BEGUR HOBLI,
BENGALURU – 560 068
(REP. BY ITS MANAGING DIRECTOR
SRI. SUNDER GENOMAL,
AGED ABOUT 58 YEARS,
S/O. SRI. TOPANDAS VERHOMAL GENOMAL]

.....PETITIONER

(BY SRI. CHYTHANYA.K.K., ADVOCATE)

AND

1. UNION OF INDIA,
   REP. BY THE SECRETARY OF
   MINISTRY OF FINANCE,
   DEPARTMENT OF REVENUE,
   ROOM NO.128-A, NORTH BLOCK,
   NEW DELHI – 110 001.

2. THE DEPUTY COMMISSIONER OF
   INCOME TAX,
   CENTRALIZED PROCESSING CELL – TDS,
   AAYKAR BHAVAN, SECTOR – 3,
   VAISHALI, GHAZIABAD,
   U.P.-201 010.

3. THE COMMISSIONER OF
INCOME TAX (TDS),
ROOM NO.59, HMT BHAVAN,
4TH FLOOR, BELLARY ROAD,
GANGANAGAR,
BANGALORE – 560 032.

...RESPONDENTS

(BY SRI. K.V.ARAVIND, ADVOCATE FOR R1 TO R3)

THESE WRIT PETITIONS ARE FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE BY AN APPROPRIATE WRIT OR ORDER IN THE NATURE OF CERTIORARI OR OTHERWISE THAT SEC. 206-AA OF THE I.T. ACT, INSERTED BY THE FINANCE (NO.2) ACT, 2009 AS NOT APPLICABLE TO IN RESPECT OF PAYMENTS MADE TO NON-RESIDENTS THE RELEVANT EXTRACT OF SEC.206-AA IS ENCLOSED AS ANNEXURE-A, ETC.

THESE WRIT PETITIONS COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

O R D E R

The petitioner has *inter alia* assailed Annexures C1 & C2 dated 27.01.2014 and 29.01.2014, F1 & F2 dated 02.03.2014 and G1 & G2 dated 10.06.2014 and 11.06.2014 respectively. These are intimations issued under Section 154 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act' for the sake of brevity).

2. The facts germane to the disposal of these writ petitions are that the petitioner had filed its statements giving details of the tax deducted at source as per Section 200 of the Act. The said statement was required to be processed under Section 200-A of the Act. It is the case of the petitioner that at the time of processing of the said statements, Annexures: D1 & D2 dated 26.07.2013 and 30.10.2013 were issued to the petitioner. Those intimations were issued under Section 200-A of the Act. The petitioner accepted those intimations. When the matter stood thus, the petitioner received Annexures C1 & C2 and thereafter, Annexures F1 & F2 and Annexures G1 & G2. It is necessary to note that Annexures: C1 & C2 were initially assailed in the writ petition and during the pendency of the writ petition, Annexures:F1 & F2 and G1 & G2 were issued. Those annexures have also been assailed after amending the writ petition.

3. I have heard the learned counsel for the petitioner and learned Standing Counsel for respondents and perused the material on record.

4. It is contended on behalf of the petitioner that, while exercising powers under Clause (c) of sub Section (1) of Section 154 of the Act, the concerned authority had to comply with sub-section (3) of Section 154 of the Act, particularly, where a rectification which has the effect of enhancing an assessment or reducing refund or otherwise increasing the liability of the assessee, shall not be made under this section unless the authority concerned has given notice to the assessee. But, in the instant cases, the impugned intimations at Annexures: C1 & C2, F1 & F2 and G1 & G2 have been issued without complying with the procedure contemplated under sub-section (3) of Section 154 of the Act inasmuch as reasonable opportunity of hearing is not given to the petitioner. Drawing my attention to the impugned annexures, it was contended that those annexures are stated to be intimations under Section 154 of the Act, but in effect they are orders enhancing the demand and the impugned annexures itself state that the intimations have to be treated as notice of demand under Section

156 of the Act. In this context, it was contended that there being violation of the principles of natural justice, the impugned annexures would have to be quashed and the Respondent-Authorities have to re-do the proceeding under Section 154 of the Act by complying with the mandatory requirements of that provision.

5. Per contra, learned Standing Counsel for the respondents contended that the impugned intimations have been issued in terms of the scheme which has been revised by the Ministry of Finance in terms of sub-section (2) of Section 200-A of the Act, which deals with the Processing of Statements of Tax Deducted at Source. The said scheme has been issued by way of notification dated 15.01.2013, by which the Centralized Processing Cell (TDS) has been established at Ghaziabad and this scheme itself is called 'Centralised Processing of Statements of Tax Deducted at Source' Scheme, 2013 (hereinafter referred to as 'Scheme' for short) that the Scheme does not contemplate personal appearance of any assessee at the Cell at Ghaziabad; that the scheme is not only in accordance with Section

200-A of the Act, but also in compliance of Section 154 of the Act; that the comprehensive scheme not only takes care of the processing of the statements filed under Section 200 of the Act by an assessee but also rectification of the mistake in the statement as contemplated under Section 154 of the Act. In the instant case, the said scheme has been followed and therefore, the impugned annexures would not call for any interference.

6. Learned counsel for the respondents during the course of the submission has filed the scheme along with a memo and drawing my attention to Clauses (9) and (10) of the Scheme, contended that there is no violation of any provision of law in the instant case and therefore, the impugned annexures would not call for any interference.

7. I have considered the rival submissions of the parties in light of Sections- 200, 200-A and Section-154 and Section-156 of the Act as well as the scheme. Under Section 200 of the Act, any person

deducting any sum under the provisions of the foregoing sections, has to prepare a statement and file it before the concerned authority. That statement has to be verified and processed in terms of Section 200-A of the Act. Section 200 was re-numbered as sub-section (1) thereof by the Finance Act, 2002 w.e.f. 01.06.2002. Sub-section (3) of Section 200 was introduced w.e.f. 01.04.2005 under the Finance (No.2/2004) Act. Section 200-A deals with the Processing of Statements of Tax Deducted at Source, which was inserted by the Finance (No.2/2009) Act w.e.f. 01.04.2010. Considerations that have to be made while processing Statement filed under sub-section (3) of Section 200 are envisaged under Section 200-A of the Act. Sub-section (2) of Section 200-A empowers the Central Board of Direct Taxation (CBDT) to make a scheme for centralized processing of statements of tax deducted at source to expeditiously determine the tax payable by, or the refund due to, the deductor as required under sub-section (1) of Section 200-A of the Act. In terms of that provision, the scheme

has been prepared and notified on 15.01.2013. The Scheme reads as under:-

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (II) OF DATED THE 15TH JANUARY, 2013]

GOVERNMENT OF INDIA
MINISKTRY OF FINANCE
DEPARTMENT OF REVENUE
[CENTRAL BOARD OF DIRECT TAXES]

NOTIFICATION

New Delhi, the 15th January, 2013

S.O. 169 (E) – In exercise of the powers conferred by sub-section (2) of Section 200A of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following scheme for centralized processing of statements of tax deducted at source, namely :-

1. **Short title and commencement-** (1) This scheme may be called the Centralised Processing of Statements of Tax Deducted at Source Scheme, 2013

(2) It shall come into force on the date of its publication in the Official Gazette.

2. Definitions.- (1) In this scheme, unless the context otherwise requires,-

a) "Act" means the Income-tax Act, 1961 (43 of 1961);

b) "Assessing officer" means the Assessing Officer who is ordered or directed under Section 120 of the Act to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer under Chapter XVII of the Act;

c) "Authorised Agency" means the person authorized by the Director General to receive the statement of tax deducted at source or correction statement of tax deducted at source;

d) "Board" means the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 (54 of 1963),

e) "Cell" means the Centralised Processing Cell having jurisdiction over such statements of tax deducted at source as may be specified by the Board;

f) "Commissioner" means the Commissioner of Income-tax in charge of the Centralised Processing Cell;

g) "Correction statement of tax deducted at source" means the statement furnished for rectifying any mistake or to add, delete or update the information furnished in the statement of tax deducted at source furnished under sub-section (3) of Section 200 of the Act;

h) "deductor' means a person deducting tax in accordance with the provisions of Chapter XVII of the Act;

i) "Director General" means the Director General of Income-tax (Systems) appointed as such under sub-section (1) of section 117 of the Act;

j) 'Portal" means the web portal of the authorized agency or the web portal of the Cell, as the case may be;

k) 'Statement of tax deducted at source" means statement of tax deducted at source furished under sub-section (3) of section 200 of the Act.

(2) The words and expressions used herein but not defined and defined in the Act shall have the meaning respectively assigned to them in the Act.

3. Centralised Processing Cell.- The Borad may set up as many Centralised Processing Cells as it may deem necessary and specify their respective jurisdictions.

4 Furnishing of correction statement of tax deducted at source,- (1) A deductor shall furnish the correction statement of tax deducted at source in the form specified by the Director General –

a) at the authorized agency through electronic mode; or
b) online through the portal

(2) The correction statement referred to in sub-paragraph (1) shall be furnished under digital signature or verified through a process in accordance with the procedure, formats, and standards specified by the Director General.

5. Processing of statements,- (1) The Cell shall process the statement of tax deducted at source furnished by a deductor in the manner specified under sub-section (1) of Section 200-A of the Act after taking into account the information contained in the correction statement of tax deducted at source, if any, furnished by the deductor before the date of processing.

(2) The Commissioner may –

a) adopt appropriate procedure for processing of the statement of tax deducted at source; or

b) decide the order of priority for processing of the statement of tax deducted at source based on administrative requirements.

6. Rectification of mistake,- (1) An Income-tax authority of the Cell may, with a view to rectifying any mistake apparent from the record under Section 154 of the Act, on its own motion or on receiving an application from the deductor, amend any order or intimation passed or sent by it under the Act.

(2) An application for rectification shall be furnished in the form and manner specified by the Director General.

(3) Where a rectification has the effect of reducing the refund or increasing the liability of the deductor, an intimation to this effect shall be sent to the deductor electronically by the Cell and the reply of the deductor shall be furnished in the form and manner specified by the Director General.

(4) Where an amendment has the effect of reducing a refund already made or increasing the liability of the deductor, the order under section 154 of the Act passed by an Income-tax authority of the Cell shall be deemed to be a notice of demand under Section 156 of the Act.

7. Adjustment against outstanding tax demand,- Where a refund arises from the processing of a statement under this scheme, the provisions of Section 245 of the Act shall, so far as may be, apply.

8. Appeal,- (1) Where a statement of tax deducted at source is processed at the Cell, the appeal proceeding relating to the processing of the statement shall lie with the Commissioner of Income-tax (Appeals) having jurisdiction over the Assessing Officer who has jurisdiction over the deductor and any reference to Commissioner of Income-tax (Appeals) in any communication from the Cell shall mean such jurisdictional Commissioner of Income-tax (Appeals).

(2) The Assessing Officer who has jurisdiction over the deductor shall submit the remand report and any other report to be furnished before the Commissioner of Income-tax (Appeals) and an order,

if any, giving effect to appellate order shall be passed by such Assessing Officer.

9. No personal appearance at the Cell.- (1) No person shall be required to appear personally or through authorized representative before the authorities at the Cell in connection with any proceedings.

(2) The Cell may call for such clarification, evidence or document as may be required for the purposes of the processing of statement of tax deducted at source or for the purposes of the rectification of any order or intimation passed or sent by the Cell under the provisions of the Act.

(3) The deductor shall furnish the reply to any communication under sub-paragraph (2) in such format as may be specified by the Director General.

10. Service of notice or communication, - (1) The service of a notice or order or intimation or any other communication by the Cell may be made by delivering or transmitting a copy thereof to the deductor. -

a) by electronic mail; or

b) by placing such copy in the registered electronic account of the deductor on the portal of the Cell; or

c) by any mode mentioned in such-section (1) of Section 282 of the Act.

(2) The date of posting of any communication under sub-paragraph (1) in the electronic mail or electronic account of the deductor in the portal of the Cell shall be deemed to be the date of service of such communication.

(3) The intimation, orders and notices shall be computer generated and need not carry physical signature of the person issuing it.

11. Power to specify procedure and processes,- The Director General may specify procedures and processes, from time to time, for effective functioning of the Cell in an automated and mechanized environment, including specifying the procedure,

formats, standards and processes in respect of the following matters, namely,-

a) form of correction statement of tax deducted at source;

b) the manner of verification of correction statement of tax deducted at source;

c) receipt of correction statement of tax deducted at source;

d) form of rectification application;

e) the manner of verification of rectification application;

f) receipt and processing of rectification applications in the Cell;

g) the mode and format of the acknowledgement to be issued by the Cell for the receipt of any document;

h) the mode of authentication of any document or information submitted to the Cell, including authentication by digital signature or electronic signature;

i) \validation of any software used for electronic filing of correction statement of tax deducted at source or rectification application;

j) Provision of web portal facility including login facility, tracking status of correction statement of tax deducted at source or statement of tax deducted at source, display of relevant details of tax deduction or refunds to the tax payer or deductor, as the case may be, and facility of download of relevant information;

k) Call centre to answer queries and provide taxpayer services, including outbound calls to a deductor requesting for clarification to facilitate the processing of the statement of tax deducted at source filed;

l) Provision of grievance redressal mechanism in the Cell;

m) Managing tax administration functions such as receipt, scanning, data entry, processing, storage and retrieval of statement of tax deducted at source and documents in a centralised manner or receipt of paper documents through authorized intermediaries.

[Notification No.03/2013 (F. No.142/39/2012-SO(TPL)]

8. From a reading of the aforesaid scheme, it becomes clear that the Department has sought to achieve a comprehensive processing of statements filed under sub-section (3) of Section 200 of the Act, including rectification of a mistake in the said statement under Section-154 of the Act. The scheme also provides for an appeal under Clause (8). On a reading of the said scheme, it becomes clear that when once a Statement is filed under sub-section (3) of Section 200 of the Act, Clauses (4), (5) and (7) of the Scheme come into operation. At the stage of processing of the scheme, Clauses (9) and (10) are also applicable. It is in terms of these clauses, the petitioner received Annexures:D1 & D2, which are the intimations issued under Section 200-A of the Act. The petitioner having accepted those intimations, paid the outstanding dues as stated in those intimations.

9. Thereafter, the respondents-Authorities have initiated proceedings for rectification of the statement under Section 154 of the Act, to be precise, i.e., under Clause (3) of sub-section (1) of Section 154 of the Act.

In that context, Clause (6) of the scheme is pertinent, which is extracted above. Sub-clause (1) of Clause (6) of the scheme says that the income tax authority in order to rectify any mistake apparent from the record under Section 154 of the Act either on its own motion or on receiving an application from the deductor. The format of the application for rectification is as stipulated in sub-clause (2). Sub-clause (3) is relevant for the purpose of the case, which states that, where a rectification has the effect of reducing the refund or increasing the liability of the deductor, an intimation to that effect shall be sent to the deductor electronically by the Cell and the reply of the deductor shall be furnished in the form and manner specified by the Director General. In this context, the argument of the counsel for the petitioner is that the impugned intimations are in the nature of demands made under Section 156 of the Act, as it expressly states so and even what is stipulated in sub-clause (3) of Clause (6) that an intimation calling for a reply has not been given to the petitioner, instead impugned annexures straightway

make a demand for the payment of alleged dues under Section 156 of the Act. It is contended that not only is there violation of sub-clause (3) of Clause (6) of the Scheme, but there is also violation of sub-section (3) of Section 154 of the Act.

10. On perusal of the impugned intimations in light of sub-clause (3) of Clause (6) of the Scheme, it is noted that, no doubt the intimations that are impugned are issued under Section 154 of the Act. But, when the scheme itself envisages that the intimation must be issued so as to call for a reply from the deductor then it cannot be in the form of a demand under Section 156 of the Act. The impugned annexures are straightway issued in the nature of demands under Section 156 of the Act by-passing the requirement as stated in sub-clause (3) of Clause (6) of the Scheme. That apart, sub-clause (4) states that where an amendment has the effect of reducing a refund already made or increasing the liability of the deductor, the order under Section 154 of the Act passed by an income-tax authority of the Cell shall be deemed to be a notice under Section 156 of the

Act. In this context, it was submitted that, without complying with the requirements of sub-clause (3) of Clause (6) and sub-seciton (3) of Section 154 of the Act, the impugned intimations are deemed to be notices under Section 156 of the Act and therefore, the impugned notices have to be quashed.

11. On a reading of Clause (6) of the Scheme that I find, what is envisaged is that before any order is passed under Clause (6) of the Scheme, an intimation has to be sent to the deductor, which is in the nature of a showcause notice and after receiving a reply from the deductor and considering the same, an order has to be passed, then it would be deemed to be a notice of demand under Section 156 of the Act. The same not being done in the instant case, on that short ground alone, the impugned intimations namely, Annexures:C1 & C2, F1 & F2 and G1 & G2 have to be quashed, as they cannot be deemed to be notices of demand under Section 156 of the Act. However, instead of directing the respondents-authorities to re-initiate fresh proceedings under Section 154 of the Act, for the sake

of convenience of the parties, the impugned annexures: C1 & C2, F1 & F2 and G1 & G2 could be construed as show cause notices or intimations as stated in sub-clause (3) of Clause (6) of the Scheme to which the petitioner is at liberty to reply within a period of three weeks from the date of receipt of a certified copy of this order and on receipt of the reply by the respondents-Authorities, the same shall be considered in accordance with law and a speaking order be passed thereon. Till then no precipitative or coercive action to be taken by the respondents pursuant to the impugned notices or intimations.

12. It is needless to mention that, in the event the petitioners does not reply to the impugned annexures, which are construed as showcause notices, within the aforesaid time frame, the respondents-Authorities are at liberty to take steps in accordance with law.

All contentions on both sides are kept open.

With the above observations and directions, the writ petitions stand disposed.

Sd/-
JUDGE

KGR*