



**IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
ORIGINAL SIDE**

**BEFORE:**  
**HON'BLE JUSTICE RAJA BASU CHOWDHURY**

**WPO/398/2025  
Rajneesh Agarwal  
Vs.  
Income Tax Officer, Ward 22(2)**

For the petitioner : Mr. Vinay Shriff, Adv.,  
Mr. Dev Kr. Agarwal, Adv.  
Ms. Swarnwarshi Poddar, Adv.

For the respondent : Mr. Soumen Bhattacharjee, Adv.,  
Mr. Ankan Das, Adv.  
Ms. Shradhya Ghosh, Adv.

Heard on : 28.10.2025.

**Judgment on : 3<sup>rd</sup> November, 2025.**

**RAJA BASU CHOWDHURY, J:**

1. The present writ petition has been filed, inter alia, praying for a direction upon the respondent to process the refund of Rs.22,73,833/- along with updated interest under Section 243, which has been wrongly recorded as 244A of the Income Tax Act, 1961, (hereinafter referred to as the "said Act"), until the date of payment.
  
2. The petitioner is a practising Chartered Accountant. According to the petitioner, he maintains his books of accounts on a cash basis and



accordingly, filed his Income Tax Return for the assessment year 2018-19 in Form ITR-3 on 14<sup>th</sup> August, 2018. The declared net income of the petitioner was Rs.37,09,520/- on which the payable tax was Rs.9,53,117/-. As would appear from the records, TDS to the tune of Rs.39,51,350/- was deducted, making the petitioner eligible to a refund of Rs.29,98,230/-. Subsequently, the petitioner received an intimation under Section 143(1) for the assessment year 2018-19 on 7<sup>th</sup> January, 2020 that the net amount payable was Rs.9,75,430/- while the TDS allowed was Rs.1,68,300/-. Still later the petitioner received an order under Section 154 of the said Act dated 16<sup>th</sup> January, 2024. The order reflected a refund of Rs.55,54,357/- out of which Rs.22,73,833/- was shown to be withheld under Section 245 of the said Act. Having regard to the withholding amount of Rs.22,73,833/-, the petitioner had written a letter to the Income Tax Department regarding the shortfall in refunding the amount of Rs.37,28,198/-. The petitioner would contend that despite the refund of Rs.32,80,524/- being sanctioned by the Department by order dated 16<sup>th</sup> January, 2024, the petitioner received only Rs.18,26,159/- on 18<sup>th</sup> March, 2024. As would appear from the above, Rs.14,65,365/- was withheld without any explanation. Consequently, by communication in writing dated 20<sup>th</sup> March, 2024, the petitioner had requested the respondent to release both the aforesaid amount of Rs.22,73,833/- which had been withheld under Section 245 of the said Act, and the wrongly adjusted amount of Rs.14,65,365/-. In fact, the petitioner had subsequently filed a rectification petition under Section



154 of the said Act on 2<sup>nd</sup> August 2024 seeking refund of Rs.37,28,184/- and had accordingly requested the Department to provide the details in relation to withholding of the amount under Section 245 of the said Act. Despite running from pillar to post and despite making a representation on e-nivaran dated 4<sup>th</sup> October 2024, since the petitioner did not succeed in getting refund, the petitioner was constrained to file a writ petition which was registered as WPA No.6316 of 2025. The said writ petition was, however, subsequently withdrawn on the assurance of the respondent that the issue would be resolved. The petitioner received the refund of Rs.14,99,725/- on 5<sup>th</sup> May 2025 and accordingly, having regard to the assurance given by the respondent, the writ petition was withdrawn. However, since nothing fructified, the petitioner had written a letter on 13<sup>th</sup> May, 2025 not only calling for an explanation from the respondent but also seeking for the details of the figures which could have authorised the respondent to withhold the amount by invoking the power under Section 245 of the said Act. Since no steps were taken thereafter, the instant writ petition has been filed.

3. At the very outset, Mr. Bhattacharjee, learned Senior Standing counsel appearing for the Income Tax Department, has raised the point of maintainability and has contended that since the petitioner had previously withdrawn the writ petition, the instant writ petition should not be entertained. Mr. Bhattacharjee has submitted that by withdrawal of the writ petition, the petitioner has in fact abandoned his claim. In support of



the aforesaid contention, reliance has been placed on the judgment delivered in the case of **Sarguja Transport Service v. State Transport Appellate Tribunal, M.P., Gwalior & Ors.**, reported in (1987) 1 SCC 5.

4. Responding to the above, Mr. Shriff has contended that the judgment in the case of **Sarguja Transport** (supra) was delivered in the peculiar fact of that case with the object of deterring Bench hunting for mala fide purpose. According to Mr. Shriff, the above judgment has subsequently been explained by the Hon'ble Supreme Court in the case of **Sarva Shramik Sanghatana (KV), Mumbai v. State of Maharashtra & Ors.**, reported in (2008) 1 SCC 494. According to Mr. Shriff, the provisions of Order 23 Rule 1(4) of the Code of Civil Procedure, 1908 would apply to the plaintiff seeking to withdraw the suit without permission of the Court and in such case, he would be precluded from instituting the suit in respect of the subject matter. This apart, he has also submitted that simply because the writ petition proceeds on similar issue, the same would not attract the provisions of Order 23 Rule 1(4) of the Code of Civil Procedure, 1908 as the cause of action and the relief claimed in the second suit have to be the same as that of the first suit. In the instant case, since the respondent has also made part payment, and resiled from the assurance, the cause of action for the subsequent writ petition is different from the first writ petition. On such ground, he would submit that the judgment delivered in the case of **Sarguja Transport** (supra) is distinguishable.



5. Heard learned advocates for the respective parties and considered the materials on record. I find that admittedly in this case an amount of Rs.22,73,833/- is refundable to the petitioner out of Rs.32,80,524/- which was originally refundable in favour of the petitioner, as would corroborate from the intimation issued under Section 143(1) of the said Act for the assessment year 2018-19 dated 7<sup>th</sup> January 2020. Later, on the basis of a rectification application filed under Section 154 of the said Act, an order was passed on 16<sup>th</sup> January 2024, whereunder the gross refundable amount was shown to be Rs.55,54,357/-, out of which, Rs.22,73,833/- was shown to be withheld and the net refundable amount was Rs.32,80,524/-.

Since despite making repeated representations thereafter, no fruitful purpose was served, the petitioner was compelled to file a writ petition and ultimately after much persuasion, the petitioner could succeed in getting refund of Rs.18,26,159/- on 18<sup>th</sup> March 2024. However, since the balance amount was not refunded, the petitioner was compelled to file a writ petition which was registered as WPA No.6316 of 2025. The said writ petition was subsequently withdrawn on 7<sup>th</sup> May 2025 which, the petitioner claims, was under an assurance given by the respondent that the dispute would be resolved. In fact, records would reveal that on 5<sup>th</sup> May 2025, the petitioner received a sum of Rs.14,99,725/- on account of refund. However, since the disputes were not resolved, the petitioner, later, on 13<sup>th</sup> May 2025, had issued a letter and following the same, the present writ petition has been filed.



6. I find that though the respondent has raised the point of maintainability on the ground that the petitioner has abandoned his previous claim by placing reliance on the provisions of Order 23 Rule 1(4) of the Code of Civil Procedure, 1908, such statement of the respondent does not appear to be correct in the light of the sequence of events narrated hereinabove. Admittedly, the respondent had refunded a sum of Rs.14,99,725/- to the petitioner on 5<sup>th</sup> May 2025. Following the above, the petitioner withdrew the writ petition. However, since no further step was taken by the respondent, the petitioner had written the letter dated 13<sup>th</sup> May 2025 and ultimately the present writ petition has been filed. It is equally true that the cause of action for the previous writ petition and the present writ petition are not identical. In the interregnum, a part of the petitioner's claim has already been allowed. Admittedly, the petitioner is entitled to the refund as determined by the Income Tax Department. The respondent has been holding onto the same without any justification. Mr. Bhattacharjee, on instructions, has stated in response to a query from the Court that no independent proceeding has been initiated against the petitioner in respect of the withholding of Rs.22,73,833/-. It is true that Section 245 of the said Act authorises the Income Tax Department to set off refund against remaining tax payable. Unfortunately, in the instant case, the respondent has not been able to demonstrate that any amount is payable or is due from the petitioner. Law does not sanction recovery of tax in absence of any specific charging statutory provision. In the light of the above and since the cause of action



for the instant petition is distinct from the previous petition, the judgment delivered in the case of **Sarguja Transport** (supra) cannot assist the petitioner

7. Having regard thereto, I am of the view that there is no scope for the respondent to hold on the aforesaid amount. The writ petition is accordingly allowed with consequential relief in the form of interest in accordance with law in favour of the petitioner. It is expected that the respondent shall complete the process of refund within a period of ten weeks from the date of communication of this order.

8. There shall be no order as to costs.

9. Urgent Photostat certified copy of this order, if applied for, be made available to the parties on priority basis upon compliance of all formalities.

**(RAJA BASU CHOWDHURY, J.)**

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AR(CR)