

Draft sent to  
Per P. Lakshmi  
25/2/18

**IN THE HIGH COURT OF JUDICATURE AT:HYDERABAD:  
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

**W.P. NO. 10274. OF 2018.**

Between:

Kokilaben J Kadakia, W/o . Late. Shri. Jayantilal M. Kadakia  
aged about \_\_\_\_\_ years, Occ: \_\_\_\_\_  
R/o 5-2-223, Distillery Road, Opp: Andhra Bank,  
Hyderbasti, Secunderabad – 500 003.  
PAN: AFAPK 3198 L

... Petitioner

AND

1. The Commissioner,  
Income Tax Department,  
\_\_\_\_\_ Floor, \_\_\_\_\_ Block,  
Income Tax Towers, A.C. Gaurds, Masab Tank,  
Hyderabad.
2. The Additional Commissioner of Income Tax,  
Range -10, \_\_\_\_\_ Floor, \_\_\_\_\_ Block,  
Income Tax Towers, A.C. Gaurds, Masab Tank,  
Hyderabad.

..... Respondents

**AFFIDAVIT**

I, Kokilaben J Kadakia, W/o. Late. Shri. Jayantilal M. Kadakia aged about  
\_\_\_\_\_ years, Occ: \_\_\_\_\_ R/o 5-2-223, Distillery Road, Opp: Andhra Bank,  
Hyerbasti, Secunderabad – 500 003, (PAN: AFAPK 3198 L) do hereby  
solemnly affirm and state on oath as follows:

1. I am the Petitioner herein and as such well acquainted with the facts of  
the case.
2. I submit that I am filing the present writ petition questioning the action  
of the Respondents 1 and 2 in not issuing refund orders in respect of the  
amounts which have to be refunded to me as per my Income Tax  
Assessment of the Petitioner for the years 2007-08, 2008-09 and 2009-10 .  
I submit that I am having certain properties and receiving some rental

income on the said immovable properties and the tenants have deducted TDS and thereafter I have filed the Assessment for the years 2007-08, 2008-09 and 2009-10. In respect of the Assessment year 2007-08, an amount of Rs. 5,25,76/- and for the year 2008-09, an amount of Rs.8,45,972/- has to be refunded to me as per the assessment filed by me. Similarly for the Assessment year 2009-10, an amount of Rs.4,05,254/- has to be refunded to me as per the Assessment filed by me. It is submitted that though about 8 years have passed after the date of filing of the Assessment, the Respondents are silent and they are not intimating me anything about the status of the Assessment. As I have not received orders from the office of the Respondents raising any queries about my Assessment, it has to be deemed that the said Assessment is accepted and there is no variation or alteration in the assessment filed by me. Thus, the amounts as mentioned by me have to be refunded to me. However, the Respondents are silent and they are not taking any action on my repeated requests for refunding the amount.

3. I submit that I have made a representation to the 2<sup>nd</sup> Respondent herein on 24.10.2015 requesting for immediate processing of my case and for refund of the amounts. However, when there was no response, I have also made a representation to the Income Tax Ombudsman on 06.06.2016, but the same has also met the same fate and there is no response from any quarter. I submit that the action of the Respondents in not refunding the amounts due to me in spite of passage of about 8 years is totally arbitrary and illegal and thus I am constrained to file the present writ petition.

4. I submit that I have no other equally efficacious alternative remedy except to approach this Hon'ble Court by invoking the extraordinary original jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India.

5. I submit that I have not filed any other writ petition and no other proceedings are pending before any court of law seeking the same relief as prayed for in this writ petition.

6. It is necessary that this Hon'ble Court may be pleased to direct the Respondent to refund the amounts payable to the Petitioner as per the Assessments in respect of the Assessment years 2007-08, 2008-09 and 2009-10 pending disposal of the writ petition.

7. It is, therefore, prayed that this Hon'ble Court may be pleased to issue a writ of mandamus or any other appropriate writ or order or direction declaring the inaction of the Respondents in refunding the amount due to the Petitioner in respect of the Assessment years 2007-08, 2008-09 and 2009-10 as arbitrary and illegal and consequently direct the Respondents to refund the amounts as per the Assessments and pass such other order or orders in the interest of justice.

Sworn and signed before me on  
this the      day of February, 2018  
at Hyderabad.

Deponent

Advocate/Hyderabad

**VERIFICATION**

I, Kokilaben J Kadakia, W/o. Late. Shri. Jayantilal M. Kadakia aged about \_\_\_\_ years, Occ: \_\_\_\_\_ R/o 5-2-223, Distillery Road, Opp: Andhra Bank, Hyerbasti, Secunderabad – 500 003, being the deponent herein, do hereby verify and declare that the above paragraphs are true and correct to the best of my knowledge, information and belief and as per legal advice.

Verified on this the \_\_\_\_ day of February, 2018 at Hyderabad.

**Counsel for the Petitioners**

**Deponent**

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD**  
For the State of Telangana and the State of Andhra Pradesh

W.P.No. 10274 OF 2018

**Between:**

Kokilaben J. Kadakia, W/o. Late. Shri.Jayantilal M. Kadakia,  
Aged about 83 years, Occ: Housewife,  
R/o. 5-2-223, Distillery Road, Opp: Andhra Bank,  
Hyderabasti, Secunderabad – 500 003, PAN: AFAPK 3198L

...Petitioner

A N D

1. The Asst. Commissioner of Income Tax,  
Circle 10(1), Income Tax Towers,  
A.C. Guards, Masab Tank, Hyderabad.

2. The Joint Commissioner of Income-tax,  
Range – 10, Income Tax Towers,  
A.C. Guards, Masab Tank, Hyderabad.

...Respondents

**COUNTER-AFFIDAVIT**

I, Thamba Mahendra, S/o. T.Jagadeeswara, aged 34 years,  
Occ: Government Service, R/o. Hyderabad, do hereby solemnly affirm  
and state on oath as follows:

1. I am the Deponent herein. The jurisdiction over the case presently vests with me, and as such, I am well acquainted with the facts of the case. I am also deposing to this affidavit on behalf of Respondents No.1 and I have gone through the writ affidavit filed by the petitioner and deny such of those averments therein which are not specifically admitted herein by me.

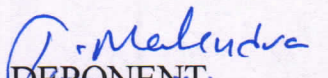
2. It is submitted that for the A.Y. 2008-09 the petitioner has filed her return of income on 31.07.2008 vide Ack. No.1066003997 declaring total income of Rs.98,24,372/-.. The petitioner has claimed for giving credit to the TDS of Rs.41,12,763/-and has claimed for a refund of

Rs.8,45,972/-. The return was processed on 18.03.2010 and a demand of Rs.38,86,710/- was raised due to mismatch of TDS amount. Subsequently rectification order u/s.154 was passed on 17.01.2018 giving credit to TDS amount of Rs.19,16,036/- to the extent of TDS available which resulted in reduction of demand to Rs.24,58,160/-. However, the remaining TDS claim of the petitioner is not matching with e-TDS database. A letter has been sent to the petitioner for obtaining the original TDS certificates for giving credit for the same. In response to the letter, petitioner has submitted the copies of TDS certificates on 12.04.2018. After verifying the same rectification order u/s.154 of the Act has passed on 12.04.2018 which resulted in refund of Rs.13,57,800/- and the refund was issued to petitioner through refund banker system on 12.04.2018. The returns filed for the A.Ys. 2007-08 and 2009-10 are not readily traceable, serious efforts are being made to trace the same. On verification of the said returns, the tax, if any, payable by the petitioner, or the refund, if any, due to the petitioner, will be determined.

3. It is therefore submitted that the petitioner is not entitled to seek indulgence of this Hon'ble Court under Article 226 of the Constitution of India, and hence, the writ petition is liable to be dismissed with costs of this respondent.

Sworn and signed before me  
On this the 17th day of April, 2018,  
At Hyderabad.

Attestor

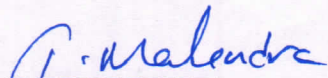
  
**DEPONENT**  
(THAMBA MAHENDRA)  
आयकर सहायक आयुक्त  
Asst. Commissioner of Income Tax  
सर्किल-10(1), हैदराबाद  
Circle-10(1), Hyderabad

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**VERIFICATION**

I, Thamba Mahendra, S/o. T.Jagadeeswara, aged 34 years, Occ: Government Service, R/o. Hyderabad, do hereby verify and declare that the contents of above paras are true and correct to the best of my knowledge, belief and information, hence verified on this the 17<sup>th</sup> day of April, 2018, at Hyderabad.

**ADVOCATE**

  
**DEPONENT**  
(तमबा महेंद्र)  
(THAMBA MAHENDRA)  
आयकर सहायक आयुक्त  
Asst. Commissioner of Income Tax  
सर्कल-10(1), हैदराबाद  
Circle-10(1), Hyderabad

TO  
Pesi Prabhakar  
(Advocate)

DISTRICT :: HYDERABAD

**IN THE HIGH COURT OF  
JUDICATURE AT HYDERABAD**  
For the State of Telangana and the  
State of Andhra Pradesh

W.P.No 10274 OF 2018

**COUNTER AFFIDAVIT**

**M.KIRANMAYEE (17115)**  
Sr. Standing Counsel for  
Income-tax Department

Counsel for the Respondents

9848206602

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