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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgement reserved on: ***03.02.2023***

% *Judgement pronounced on:* ***23.03.2023***

\+ **W.P.(C) 16698/2022**

OYO HOTELS AND HOMES PRIVATE LIMITED ..... Petitioner

Through: Mr Sujit Ghosh with Ms Mannat Waraich and Ms Anshika Agarwal, Advs.

versus

DEPUTY ASSISTANT COMMISSIONER OF INCOME TAX & ANR. ..... Respondents

Through: Mr Puneet Rai, Sr Standing Counsel.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MS JUSTICE TARA VITASTA GANJU

JUDGMENT

TARA VITASTA GANJU, J.:

1. The present Petition has been filed seeking directions for disbursal of a refund amount of Rs.31,48,42,701/- along with applicable interest for the Assessment Year (AY) 2020-2021. The Petitioner's only grievance is that despite its refund being determined and an intimation thereof being given to the Petitioner, the same has not been remitted as yet.

2. The following broad facts are required to be noticed for adjudication of this Writ Petition:-

2.1 The Petitioner filed a return of Income Tax for AY 2020-2021 declaring a loss of Rs.16,13,83,22,476/- and claimed a refund of Rs.31,46,26,494/- on account of tax deducted at source under Section

139 of the Income Tax Act, 1961 [hereinafter "the Act"]. Pursuant to a de-merger and to give effect to the Scheme of Arrangement, the Petitioner filed a revised return of Income Tax for AY 2020-2021 on 27.03.2021 [hereinafter "Revised Return"] declaring a loss of Rs.16,70,16,05,998/- and claiming a refund of Rs.43,91,40,294/-.

2.2 The Petitioner was subjected to a scrutiny assessment under Section 143(2) of the Act by notice dated 29.06.2021 which was responded to by the Petitioner with all the necessary clarifications as sought for, on 29.07.2021.

2.3 Subsequently, a notice under Section 142(1) of the Act was sent to the Petitioner on 14.12.2021, wherein detailed information and documents were sought by the Revenue. The Petitioner submitted a response to the same on 27.12.2021. On the same day, the Petitioner received an intimation under Section 143(1) of the Act which stated that a refund of Rs.33,05,84,840/- (inclusive of interest) has been calculated as due to the Petitioner [hereinafter "Refund Intimation"]. The Refund Intimation also stated that the refund shall be credited within a period of 15 days from that date.

2.4 Despite the lapse of several months after the passing of the Refund Intimation, no refund was received by the Petitioner. Aggrieved by the inaction of the Respondents, the Petitioner filed online complaints on the Income Tax Portal on 14.05.2022 and 16.06.2022 seeking disbursal of the refund amount as determined under the Refund Intimation. This was followed by detailed letters dated 06.09.2022 and 21.09.2022 sent to the Respondents seeking disbursal of the

refund amounts.

2.5 Since no response was received, the Petitioner requested an inspection of the file and records of AY 2020-2021 and asked for a copy thereof by its letter dated 11.11.2022. In response thereto, the Revenue by an email of even date, informed the Petitioner that its refund has been withheld in view of a letter dated 07.06.2022 received from the Faceless Assessment Unit of the Respondent. The letter dated 07.06.2022, however, did not contain any enclosures or reasons for the withholding of the refund of the Petitioner.

2.6 Additionally, since there was a difference of Rs.12,42,97,589/- between the Revised Return as submitted by the Petitioner and the Refund Intimation, the Petitioner filed an appeal before the Commissioner of Income Tax (Appeals). The said appeal is, however, not a subject matter of the present Writ Petition.

3. This Court, by its order dated 07.12.2022, while issuing notice in the matter, had noticed that although an intimation concerning the refund had been received by the Petitioner on 27.12.2021, no refund had been credited to its account till date. Thus, counsel for the Respondent was directed to return with instructions on the refund.

3.1 Learned counsel appearing for the Respondents, Mr Puneet Rai, had during the hearing on 03.02.2023 handed over a letter dated 30.05.2022 addressed by the Faceless Assessment Unit and letter dated 31.05.2022 addressed by PCIT, submitting that the said documents contained the reasons for withholding of the refund due to the Petitioner. Subsequently, the Revenue filed an affidavit along with

the documents dated 30.05.2022 and 31.05.2022, stating that these documents comply with the provisions of Section 241A of the Act.

4. Learned counsel for the Petitioner, Mr Sujit Ghosh, has submitted that other than a cryptic email received on 11.11.2022 from the Revenue stating there that the refund of the Petitioner for AY 2020-2021 has been withheld "*in view of the letter dated 07.06.2022 received from FAU*", no other details had been provided by the Respondents, until after the filing of the Petition.

4.1 It was submitted by the learned counsel for the Petitioner, that where refund has been withheld by the Revenue, the provisions of Section 241A of the Act require that reasons be recorded in writing by the concerned Officer to withhold the refund and also that the approval of Principal Commissioner or Commissioner is to be taken. Reliance was placed upon the Judgments of Coordinate Benches of this Court in the matter of ***Maple Logistics P. Ltd. And Anr. vs. Principal Commissioner of Income Tax and Ors.***[1] and ***Ingenico International India Pvt. Ltd. vs. Deputy Commissioner of Income-Tax, Circle 10(1) and Others*** [2], to submit that the Revenue can stall the grant of a refund only in the circumstances as enumerated in Section 241A of the Act.

4.2 It was further submitted that the letter dated 30.05.2022 which has been produced by the Respondents does not provide substantive

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[1] **2019 SCC OnLine Del 12366**
[2] **2021 SCC OnLine Del 2969**

reasons to defend their decision to withhold the refund under the provisions of Section 241A of the Act.

5. Learned counsel for the Respondents on the other hand submits that the requisite reasons for withholding the refund for AY 2020-2021 in the case of the Petitioner are as set forth in the letter dated 30.05.2022 and approval, therefore, was also granted by letter dated 31.05.2022. Thus, the necessary compliance as is required by the provisions of Section 241A of the Act has been undertaken by the Revenue.

6. We have heard the learned counsel for the parties and perused the record. As stated hereinabove, an intimation under Section 143(1) of the Act was issued to the Petitioner on 27.12.2021 *inter-alia* setting forth that an amount of Rs.33,05,84,840/- (inclusive of interest) has been calculated by the Respondent No. 1 as refund due to the Petitioner. This amount has not been paid to the Petitioner despite repeated reminders.

7. The power to withhold a refund can be exercised under Section 241A of the Act as follows:

> *"241A. Withholding of refund in certain cases.—For every assessment year commencing on or after the 1st day of April, 2017, where refund of any amount becomes due to the assessee under the provisions of sub-section (1) of section 143 and the Assessing Officer is of the opinion, having regard to the fact that a notice has been issued under sub-section (2) of section 143 in respect of such return, that the grant of the refund is likely to adversely affect the revenue, he may, for reasons to be recorded in writing and with the previous approval of the Principal Commissioner or Commissioner, as the case may be, withhold the refund up to the date on which the assessment is made."*

7.1 A plain reading of the above Section envisages that the power to withhold a refund may be exercised by the Assessing Officer

[hereinafter "the AO"] subject to these conditions:

(i) the reasons for withholding a refund are to be in writing;

(ii) the AO must record, how the grant of the refund is, in his opinion, likely to adversely affect the interest of the Revenue; and

(iii) the approval of the Appropriate Authority is to be taken prior to issue of such order.

8. The issue of withholding of refund under the provisions of Section 241A of the Act is no longer *res integra*. This Court in various decisions has *inter-alia* held that a refund may be withheld subject, however, to reasons being recorded in writing on how the grant of refund in the opinion is *"likely to adversely affect revenue"*. It is well settled that a refund cannot simply be withheld if an Assessee is selected for scrutiny assessment or where a notice has been issued under sub-section (2) of Section 143 of the Act.

8.1 A Coordinate Bench of this Court comprising one of us (Rajiv Shakdher, J.), in the matter of ***Ingenico International*** case (supra) has clarified this provision in the following manner:-

> "*26. Therefore, a plain reading of Section 241A shows that the mere issuance of the scrutiny notice under Section 143 (2) of the Act cannot stall the remittance of refund to the assessee.* ***The refund can only be stalled if the conditions stipulated in Section 241A of the Act, to which we have made a reference above, are fulfilled, i.e., the A.O. records his reasons in writing as to why the release of refund is likely to affect the interests of the Revenue and that this step of the A.O. receives the imprimatur [which obviously would mean prior approval] of his superior officer, i.e., Principal Commissioner or Commissioner as the case may be....***
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> **[**Emphasis is ours]

8.2 Another Coordinate Bench of this Court in ***Maple Logistics*** case (supra), has held that the discretion vested with the AO to withhold a refund must be exercised judiciously and with due application of mind. The relevant extract is as follows:

> *"27. In our considered opinion, the AO has completely misunderstood the refund mechanism and the import of Section 241A of the Act. The legislative intent is clear and explicit.* ***The processing of return cannot be kept in abeyance, merely because a notice has been issued under Section 143(2) of the Act.***
> *28.* ***The Legislature has not intended to withhold the refunds just because scrutiny assessment is pending. If such would have been the intent, Section 241A of the Act would have been worded so.*** *On the contrary, Section 241A of the Act enjoins the AO to process the determined refunds, subject to the caveat envisaged under Section 241A of the Act.* ***The language of section 241A envisages that the aforesaid provision is not resorted to merely for the reason that the case of the assessee is selected for scrutiny assessment. Sufficient checks and balances have been built in under the said provision and the same have to be given due consideration and meaning. An order under section 241A should be transparent and reflect due application of mind."***

[Emphasis is ours]

8.2.1 It was further held in the ***Maple Logistics*** case (supra) that the reasons are to be recorded in writing after an objective assessment of all relevant circumstances is undertaken. It is only where after evaluation of the material placed before him, that an officer feels that the case would fall in the realm of *"adversely affecting the Revenue"* should a refund be withheld.

> *"29. The Assessing Officer is duty-bound to process the refund where the same are [sic:is] determined.* ***He cannot deny the refund in every case where a notice has been issued under sub-section (2) of section 143. The discretion vested with the Assessing Officer has to be exercised judiciously and is conditioned and channelized. Merely because a scrutiny notice has been issued should not weigh with the Assessing Officer to***

withhold the refund. The Assessing Officer has to apply his mind judiciously and such application of mind has to be found in the reasons which are to be recorded in writing. *He must make an objective assessment of all the relevant circumstances that would fall within the realm of "adversely affecting the Revenue".*

30. ***In the present case, the Assessing Officer has completely lost sight of the words in the provision to the effect that, "the grant of the refund is likely to adversely affect the Revenue".*** *The reasons that are relied upon by the Revenue to justify the withholding of the refund in the present case, are abysmally lacking in reasoning. Except for reproducing the wordings of section 241A of the Act, they do not state anything more. The entire purpose of section 241A would be negated, in case the Assessing Officer was to construe the said provision in the manner he has sought to do.* ***It would be wholly unjust and inequitable for the Assessing Officer to withhold the refund, by citing the reason that the scrutiny notice has been issued. Such an interpretation of the provision would be completely contrary to the intent of the Legislature. The Assessing Officer has been completely swayed by the fact that since the case of the assessee has been selected for scrutiny assessment, he is justified to withhold the refund of tax.***

31. The power of the Assessing Officer has been outlined and defined in terms of section 241A and he must proceed giving due regard to the fact that the refund has been determined. The fact that notice under section 143(2) has been issued, would obviously be a relevant factor, but that cannot be used to ritualistically deny refunds. The Assessing Officer is required to apply his mind and evaluate all the relevant factors before deciding the request for refund of tax. ***Such an exercise cannot be treated to be an empty formality and requires the Assessing Officer to take into consideration all the relevant factors. The relevant factors, to state a few would be the prima facie view on the grounds for the issuance of notice under section 143(2); the amount of tax liability that the scrutiny assessment may eventually result in vis-a-vis the amount of tax refund due to the assessee; the creditworthiness or financial standing of the assessee, and all factors which address the concern of recovery of revenue in doubtful cases.***

32. Therefore, merely because a notice has been issued under section 143(2), it is not a sufficient ground to withhold refund under section 241A and the order denying refund on this ground alone would be laconic. ***Additionally, the reasons which are to be recorded in writing have to also be approved by the Principal***

> ***Commissioner, or Commissioner, as the case may be and this should be done objectively…."***
>
> [Emphasis is ours]

8.3 In ***Ericsson India Private Limited v. Additional Commissioner of Income Tax, Special Range-3, New Delhi***[3], a Coordinate Bench of this Court has further held:—

> *"18.* ***The refund of amounts claimed - where they appear justified, by itself cannot be said to be adverse to the interest of the revenue. The interest of revenue lies in collecting revenue in a legal and justified manner. It does not lie in retaining the collected taxes in excess of what is justified, since the excess collection cannot even be properly termed as "revenue".*** *The excess collection of tax is a liability of the State and it lies in the interest of the revenue of the State to discharge its interest bearing liability without any delay. The sovereign cannot, but, be seen as fair, honest and credible in its dealings with its subjects. Any lapse in this regard tarnishes the image and credibility of the sovereign. It certainly cannot act like any unscrupulous businessman, who is seen to dodge his liabilities by resort to frivolous excuses and devious ways."*
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> [Emphasis is ours]

9. The reasons as recorded in the communication dated 30.05.2022 received by the Petitioner from the Regional Faceless Assessment Centre (Assessment Unit) [hereinafter "ReFAC(AU)"] state that the case was selected under Computer Aided Scrutiny Selection (CASS) and there were a large number of issues to be examined. A mention of Transfer Pricing is also made and it concludes that scrutiny assessment is presently in progress which may lead to a demand. This

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[3] **2020 SCC OnLine Del 2545**

letter further states that the grant of refund likely to adversely affect the interest of Revenue. The relevant extract is below:

8.	*Reason of withholding of refunds*	*The case was selected under CASS with large no. of issues to be examined. It is also referred to Transfer pricing.* *Scrutiny assessment is presently in progress in this case which may lead to raising of demand. Grant of refund is likely be adversely affect the revenue. It is therefore advisable that the refund in this case may be withheld u/s 241A of the I T Act.*

9.1 The PCIT [ReFAC(AU)] by its letter dated 31.05.2022 granted the approval for withholding of refund of the Petitioner *albeit* till the date of finalization of assessment as follows:

> ***"Sub: Withholding of Refund u/s. 241A – regarding***
>
> *Kindly refer to the above.*
>
> *2. In this connection, I am directed to convey that the PCIT (ReFAC)(AU) had accorded permission to withhold the refund in the below-mentioned case till the date of finalization of assessment:-*

Name	*PAN*	*A.Y*	*Refund Amount (Rs.)*
Oyo Hotels and Homes Private Limited	*AANCA6342H*	*2020 -21*	*33,05,84,840/-*

( ) ITO (HQ)
For Principal Commissioner of Income tax
(ReFAC)(AU)"

9.2 The intimation for withholding of refund was thereafter forwarded to

the Respondents from the Faceless Unit by letter dated 07.06.2022. It appears that it is this intimation of 07.06.2022, that finds reference in the email of 11.11.2022 which was received by the Petitioner with regard to withholding of its refund.

10. Quite clearly, the hurdles as set forth in the aforementioned provision have not been crossed by the Revenue in the present case. There are no worthwhile reasons recorded in writing. The reasons for withholding the refund are simply that the case was selected under CASS with a large number of *"issues"* to be examined. However, no details of any issue which requires examination has been set forth. There is then a passing mention of the fact that *"it is also referred to transfer pricing"*, however, what has been referred, is absent. No other details are given either.

10.1 While withholding a refund, the AO is required to look into various factors in relation to an Assessee, such as, the amount of tax liability which a scrutiny assessment may eventually lead to *(as is underway in this case) vis-a-vis* the amount of tax refund due; the financial standing or credit worthiness of the Assessee, and whether there would be any doubts in the Revenue recovering amounts from the Assessee.

10.2 The AO is also required to give detailed and compelling reasons as to how the release of the refund will adversely affect the interest of the Revenue.

10.3 The reasons as set forth in the communication of 30.05.2022 are bereft of any details and only reproduce the wordings of Section 241A

of the Act with some additional sketchy and vague details. There is also a complete absence of reasoning.

10.4 The Petitioner is a well reputed company with a large net-worth running into several billion dollars and not a "fly-by-night" operator. It is a tax Assessee for the last several years and the credit worthiness of the Assessee is also not in dispute.

11. Merely because a notice has been issued under Section 143(2) of the Act, it is not a sufficient ground to withhold the refund under the provisions of the Act. As has been held in ***Maple Logistics*** case (supra), it would be wholly unjust and inequitable for the AO to withhold a refund by citing the reason that a scrutiny notice has been issued and such an interpretation of the provision would be contrary to the intent of the legislature. The ReFAC(AU) has been completely swayed by the fact that the case of the Assessee has been selected by CASS for scrutiny assessment.

11.1 The Principal Commissioner of Income Tax (ReFAC)(AU) has also mechanically accorded permission to withhold the refund till the date of finalization of assessment without any application of mind in the matter.

12. In our view, the orders dated 30/31.05.2022 are bereft of cogent reasons and are not in consonance with the principles enunciated in ***Maple Logistics*** case (supra), and ***Ingenico International*** case (supra) and hence, cannot be sustained.

12.1 We, accordingly, set aside the order(s) dated 07.06.2022/30.05.2022. The Respondents shall conduct a *de novo* exercise bearing in mind the

provisions of Section 241A of the Act and principles articulated hereinabove, within six weeks of receipt of a copy of the Judgment. We have laid down the aforesaid time line considering the fact that the refund was found payable as early as on 27.12.2021.

13. The Petition is disposed of in terms of the aforesaid directions. Needless to state, the assessment proceedings, if pending, shall go on without being influenced by any observations made by this Court.

(TARA VITASTA GANJU)
JUDGE

(RAJIV SHAKDHER)
JUDGE

MARCH 23, 2023/ *ha*