

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1103 OF 2019

M/s. Vodafone Idea Limited Petitioner
versus
The Deputy Commissioner of
Income Tax (TDS) & Ors. ... Respondents

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- Mr. Deepak Chopra with Mr. Atul K. Jasani, Advocate for Petitioner.
- Mr. Sham Walve, Advocate for Respondent.

**CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.
DATE : 30th APRIL, 2019.**

P.C. :

1. Heard learned Counsel for the parties for final disposal of the Petition. Petitioner's grievance is that a refund of Rs.21,45,54,980/- payable to the Petitioner is not released by the Income Tax Department. This refund is admittedly payable to the Petitioner and it arises in the factual background which can be gathered from the communication issued by the Assessing Officer himself on 25/04/2019, relevant portion of which reads as under;

“02. In this regard, Principal demand of Rs.27,93,47,377/- was raised u/s 201(1) of the Act 1961 from AY 2007-08 to AY 2012-13. The Assessee preferred appeal before CIT (A), Pune. The CIT (A) confirmed the order of the Assessing Officer upholding the said demand. Assessee had deposited Rs.21,48,21,980/- against the said demand. Thereafter, Assessee again preferred appeal before ITAT, Pune. The said demand was deleted by ITAT, Pune. Meanwhile, further demands of Rs.53,18,76,993/- u/s 201(1) of the Act were raised for AY 2013-14 to AY 2016-17. Accordingly, Rs.21,48,21,980/- which were deposited against the demand for AY 2007-08 to AY 2012-13 was considered as payment against demand for AY 2013-14 to AY 2016-17. Subsequently, the demand for AY 2013-14 to AY 2016-17 was again deleted by CIT (A)-10, Pune. The order is received in month of March, 2019 and appeal effect was given on 28/03/2019.”

2. However, from the same communication we gather that the Assessing Officer was unable to issue the refund on account of error of Rs.20,02,034/- in the system of the

department. Again the fact that this amount was not due and payable by the Petitioner to the department but was on account of rectifiable error can be gathered from yet another communication dated 07/08/2018 issued by the Assessing Officer. Relevant portion of which reads as under;

“It has come to my notice vide various letters submitted by Vodafone Mobile Services Ltd. ('Company') that during the period FY 2011-12 – Quarter 3 (Form 27Q) the company had deducted and deposited the TDS amounting to INR 10,89,736, on payment made to HSBC and reported the transaction in the TDS statement filed for Old TAN (i.e. PNEH05354G). However, the Company has informed that while filing the quarterly TDS statement for the period FY 2011-12 – Quarter 4 (Form 27Q), the Company has also, inadvertently reported the above mentioned payment in New TAN (i.e. PNEB01584C) as well.

On account of the above inadvertent error and duplication of the entry towards payments made to HSCB, default demand for short payment of tax at source is reported against the new TAN of the Company.

I have verified the details / documents submitted by the Company in this regard and have found the same to be in order.

Since the TDS default has arisen due to incorrect reporting of foreign remittance to HSCB (deductee not having PAN in India) in the TDS statement filed for 2011-12 – Quarter 4, the TRACES Team is hereby directed to delete the “C” flag with respect to the said transaction in their records / system so that the Company is able to make revision / correction in its TDS statement filed for FY 2011-12 – Quarter 4.”

3. Upon perusal of the communication it would appear that due to human error, the Petitioner had shown payment to HSBC under old as well as new TAN giving rise to TDS mismatch. The Assessing Officer himself agrees that this is an error and the demand should be deleted from the system. Despite this communication from the Assessing Officer, the computer system of the department has not taken steps to delete the demand. As a result of which, the Petitioner's sizable tax refund in excess of Rs.21 Crores is held up.

4. Facts being clear, in our opinion, the department cannot withhold the refund of the Petitioner. Firstly, the computer system cannot override the factual aspects. If the refund is payable, whether the computer systems accepts or not, is of no consequence. More importantly, in the present case, according to the department itself, the error had to be rectified. Had this be done timely, there would have been no delay in releasing the Petitioner's refund.

5. Under these circumstances, Petition is disposed of with the following directions;

- (i) The Respondent shall release the refund of the Petitioner arising out of the assessment for the assessment years 2007-2008 to 2010-2011 with statutory interest latest by 15/05/2019.
- (ii) The Department shall take steps to rectify the error of TDS mismatch in the computer system pertaining to the Petitioner. This may be done

as expeditiously as possible. However, the refund of the Petitioner shall not be linked with the rectification of the error.

(iii) Petition is disposed of accordingly.

(SARANG V. KOTWAL, J.)

(AKIL KURESHI, J.)