

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 2698 of 2020

Date of decision: March 6, 2020

Huawei Telecommunications (India) Company Private Limited
.. Petitioner

v.

Union of India and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Tarun Gulati, Senior Advocate with
Mr. Rishab Singla and Mr. Kishore Kumar, Advocates
for the petitioner.

Mr. Tajender K. Joshi, Senior Standing Counsel for the
revenue.

...

AVNEESH JHINGAN, J.

The writ petition is filed seeking quashing of order dated 8.11.2019 passed under Section 241A of the Income Tax Act, 1961 (for short, 'the Act') withholding refund for the assessment years 2017-18 and 2018-19. Further direction is sought to the respondents to refund the amount due to the petitioner.

The short issue arising is as to whether refund can be withheld under Section 241A without the conditions mentioned therein being fulfilled?

Section 241A is quoted below:

“241A. 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.”

The section applies to the assessment year commencing on or after the 1st day of April, 2017; the refund due under Section 143(1) can be withheld till assessment is made if:- (i) there is a notice under Section 143 (2); (ii) the Assessing Officer is of the opinion that revenue would be adversely affected in case of grant of refund; (iii) the Assessing Officer has to get previous approval of the Principal Commissioner or Commissioner; and (iv) the reasons are to be recorded in writing.

In cases where the above said conditions are fulfilled, Section 241A empowers withholding of refund. The check mechanism is inbuilt in the provision i.e. for reasons to be recorded in writing. This ensures that opinion of the Assessing Officer is based on some material.

The relevant clauses of extracts explaining relevant provisions of Finance Bill of 2017 are reproduced below:

“Processing of return within the prescribed time and enable withholding of refund in certain cases

The provisions of sub-section (1D) of section 143 provide that the processing of a return shall not be necessary, where a notice has been issued to the assessee under sub-section (2)

of the said section. Amendment to the said sub-section brought by Finance Act, 2016 provides that with effect from assessment year 2017-18, processing under section 143(1) is to be done before passing of assessment order.

In order to address the grievance of delay in issuance of refund in genuine cases which are routinely selected for scrutiny assessment, it is proposed that provisions of section 143(1D) shall cease to apply in respect of returns furnished for assessment year 2017-18 and onwards.

However, to address the concern of recovery of revenue in doubtful cases, it is proposed to insert a new section 241A to provide that, for the returns furnished for assessment year commencing on or after 1st April, 2017 where refund of any amount becomes due to the assessee under section 143(1) and the Assessing Officer is of the opinion that grant of refund may adversely affect the recovery of revenue, he may, for the reasons recorded in writing and with the previous approval of the Principal Commissioner or Commissioner, withhold the refund upto the date on which the assessment is made.”

From the clauses it is clear that amendment in Section 143(1D) and insertion of Section 241A was to over-come the delay of refund where the cases were routinely selected for scrutiny. However the interest of the revenue was protected in doubtful cases by insertion of Section 241A that refund can be withheld where the Assessing Officer is of the opinion that the same may adversely affect the revenue.

In the present case, from the impugned order and the record, it is evident that there is no reason recorded for coming to the conclusion that grant of refund is likely to adversely affect the revenue, as such the order is unsustainable.

The facts are that the petitioner is engaged in the business of manufacturing and trading of telecom network equipment. The returns for the assessment years 2017-18 and 2018-19 were filed declaring taxable income of more than ₹700 crores and ₹200 crores, claiming refund of ₹48,11,52,210/- and ₹252,45,13,970/-, respectively. After various notices, reply and direction in CWP No. 28402 of 2019, refund as per communication under Section 143(1) for the assessment year 2017-18 was ₹50,89,05,185/- and for the assessment year 2018-19 was ₹275,63,65,127/-. In CWP No. 28402 of 2019 filed by the petitioner for direction to process the returns and seeking refund, the respondents filed written statement annexing order dated 8.11.2019 withholding the refund for both the years. The present petition is filed impugning the order of withholding.

It would be relevant to reproduce the impugned order in toto:

“In this case letter dated 30.10.2019 and 8.11.2019 was received requesting expeditious processing of return and issue of refund of Rs. 252.45 Cr. for the A.Y. 2018-19 and Rs. 48.35 Cr for the A.Y. 2017-18. The request for issue of refund of the assessee has been perused. It is seen that in past few years huge addition have been made including upward adjustments on the issue of transfer pricing leading to raising of huge demand on completion of scrutiny

assessment u/s 143(3) of the IT Act, 1961. It is further seen that scrutiny assessment proceedings in this case for A.Y. 2016-17, 2017-18 and 2018-19 are presently pending as on date. For A.Y. 2016-17 order u/s 92 CA(3) has already been received from the Transfer Pricing Officer proposing upward adjustment. For A.Y. 2018-19, reference has already been made to the TPO. Since similar issues are involved in all the three A.Ys for which the scrutiny assessment are pending and there is likelihood of huge demand being raised for these years as well.

In view of the above facts, the undersigned is of the opinion that grant of refund for the A.Y. 2017-18 and 2018-19 before completion of scrutiny assessment is likely to adversely affect the collection of revenue as huge demand is likely to be raised in scrutiny assessments. Therefore, in accordance with the powers conferred under the provisions of section 241A, the refund due for the A.Y. 2017-18 and 2018-19 is withheld till finalization of scrutiny assessment after obtaining approval of Hon'ble Pr. Commissioner of Income Tax, Gurgaon dated 8.11.2019.”

There is no dispute on the fact that notices under Section 143(2) have been issued for the years in question.

Learned counsel for the petitioner argued that the impugned order is unsustainable and the reasons recorded in the order do not support the opinion that grant of refund would adversely affect the revenue. He further argued that additions made in the preceding year were not sustained.

The stand of the respondents is that reasons are mentioned in the impugned order.

During the course of hearing, it was put to learned counsel for the respondents that apart from the fact that there is likelihood of demand being created, there is no reason recorded in the order as to how the refund would adversely affect the revenue.

On 19.2.2020, following order was passed:

“Reply dated 19.2.2020 has been filed on behalf of the learned Senior Standing counsel for the respondents, the same is taken on record. Copy has been supplied to the opposite counsel.

Pursuant to the order dated 17.2.2020, Assistant Commissioner of Income Tax is present in Court. After arguing for some time, on instructions from Assistant Commissioner of Income Tax, learned Senior Standing counsel for the respondents has requested that it would be more appropriate if the concerned Principal Commissioner of Income Tax (who had accorded the approval) be permitted to be present in the Court tomorrow.

Request is allowed. Let the concerned Principal Commissioner of Income Tax be present tomorrow i.e. on 20.2.2020.

A copy of this order be handed over to the learned Senior Standing counsel for the respondents under the signatures of the Bench Secretary.”

Though the requirement is that reasons should be mentioned in the order yet we heard Mr. Krinwant Sahay, Principal Commissioner of Income Tax, Rohtak present in court along with the record including the record of approval. He submits that while granting approval of withholding the refund, it is thoroughly seen that if there is history of additions made in the earlier year; whether there would be a similar addition in this year or not and lastly the demand, if created, is huge or not. It is submitted that all three aspects have been duly mentioned in the impugned order.

The authorities while invoking Section 241A lost sight that mere pendency of the proceedings under Section 143(2) in itself is not enough to withhold the refund. Had that been the case, the language of provision of withholding would have been couched differently. The selection of case for scrutiny does not automatically amounts to withholding of refund.

We have perused the record, no reasons apart from one mentioned in the order are there. The note of approval of the Principal Commissioner was also perused by us, the only reason mentioned was that there was an amount outstanding of ₹5 crores odd against the petitioner and for the said reason, the refund is withheld. Learned counsel for the petitioner disputed the fact and submitted that the said demand was set aside. Be that as it may, the pendency of demand of ₹5 crores cannot be a ground for withholding almost refund of ₹300 crores, as per Section 245, the due amount could be set off against the refund due.

In the absence of any material and reason for forming opinion that refund is likely to adversely affect the revenue withholding cannot be sustained.

Learned counsel for the petitioner relied upon various citations relating to Section 143(1D) but the same would have no direct application in the case in hand as the grievance is against order under Section 241A of the Act.

It would be further pertinent to note here that there is no dispute raised by the respondents that as on date refunds are due to the petitioner as per communication of processing of return under Section 143(1).

Respondents have not disputed that in the return filed by the petitioner for the assessment year 2019-20, the total income declared is more than ₹550 crores and refund of more than ₹183 crores has been claimed. It cannot be lost sight of that the revenue is not in a position to deny that the petitioner is running its business, the returns being filed are of almost more than ₹200 crores, there are no arrears of tax relating to any assessment year and the refund is being claimed every year. There is no allegation that the tax is not being paid or there is any irregularity in filing the returns.

The decision of Bombay High Court in Writ Petition No. 2145 of 2019—**Vodafone Idea Limited v. Deputy Commissioner of income-tax**, decided on 14.10.2019 is relied upon to contend that where requirements of Section 241A are not fulfilled, the exercise of power is bad in law. The operational paragraph of the judgment is quoted below:

“Considering these aspects of the matter, we do not find that the exercise of powers by the Assessing Officer fulfills requirement of Section 241A of the Act. We have, no doubt, about the existence of the powers. We find that the exercise of the powers would not be justified in the facts of the case. In

the result, the orders impugned in both the petitions are set aside. Resultantly, the respondents shall release refund of the petitioner arising out of the return filed for the assessment year 2017-18 and the process thereof under Section 143(1) of the Act by the Assessing Officer. This shall be done along with statutory interest within a period of three weeks from the date of receipt of copy of this order.”

Both sides relied upon decision of Delhi High Court in W.P. (C) No. 7003 of 2019—**Maple Logistics Private Limited and another v. Principal Chief Commissioner of Income Tax and others**, decided on 14.10.2019. Reliance of the petitioner is that order under Section 241A was set aside as no reasons were mentioned as to why refund is likely to adversely affect the revenue. The revenue contends that the order was set aside and the matter was remitted back to decide the issue afresh.

The contention of the respondents to remit the matter back is not found worth acceptance as in the present case, there are no reasons even in the record to support the finding that refund would adversely affect the revenue and the note in approval file that there was demand of ₹5 crores pending has been found not good enough to withhold the refund of more than ₹300 crores. Even the officials present in Court were not in a position to cite any material or reason with regard to adverse affect of refund on revenue, it would be an exercise in futility to give another opportunity.

In view of the above, writ petition is allowed. The impugned order is quashed. The respondents are directed to issue refund for the assessment year 2017-18 and 2018-19 along with statutory interest not later than within four weeks from receipt of certified copy.

Before parting, it is pertinent to note that in the present case and also from number of cases, it is evident that procedure for refund and withholding of refund is often being used as delaying tactics for various reasons including window dressing of collection of revenue. The method adopted is a short sighted vision. Apart from harassment to the assessee, it results in paying interest on the delayed amount of refund putting further burden on the exchequer. It cannot be lost sight of that trade and commerce is a life blood of the system, if the excess amount deposited as tax is not refunded to the entrepreneur/assessee, it has effect on the liquidity and business. There cannot be second opinion that the revenue collection and securing the interest of the revenue is of great importance, at the same time the revenue is to be collected like an apiarist extracts honey from beehive without destroying it. Considering the facts that in spite of there being no justifiable reason as per provisions of the statute, yet the refund was withheld for which the petitioner would be entitled to statutory interest, we deem it appropriate to further consider if costs should be imposed on the officer(s) (in their personal capacity) and consequently issue notice to Mr. Krinwant Sahay, Principal Commissioner of Income Tax, Rohtak and Mr. Dipin Goel, Assistant Commissioner of Income Tax, Circle 4(1), Gurugram to show cause why this should not be done and for this limited purpose, adjourn the matter to 28.4.2020. Let them be served through the counsel.

(AVNEESH JHINGAN)
JUDGE

(AJAY TEWARI)
JUDGE

March 6, 2020/mk

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No

