$~4

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

\+ W.P.(C) 3698/2020 & CM APPL. 13227/2020

LOUIS DREYFUS COMPANY INDIA PRIVATE LIMITED ..... Petitioner

Through: Mr. Pavan Narang, Advocate with Mr. Himanshu Sethi, Advocate.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX & ORS. ..... Respondents

Through: Mr. Zoheb Hussain, Senior Standing Counsel for respondent Nos. 1-3.
Mr. Sanjeev Sabharwal, Sr. Panel Counsel for respondent No. 4.

% Date of Decision: 13th August, 2020

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

MANMOHAN, J: (Oral)

1. The petition has been heard by way of video conferencing.

2. Present writ petition has been filed seeking refund of INR 18,90,35,522/- (Rupees Eighteen Crores Ninety Lakhs Thirty Five Thousand Five Hundred and Twenty Two Only) as determined under intimation issued by Centralised Processing Center (C.P.C.) under Section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as the "Act") for assessment

year 2018-2019 and for setting aside the reason of the Assessing Officer dated 04th February, 2020 and its approval dated 06th March, 2020 by the PCIT for withholding refund under Section 241A of the Act as well as the order dated 01st June, 2020 passed under Section 264 of the Act by the office of Principal Commissioner of Income Tax, Delhi.

3. Mr. Pavan Narang, learned counsel for petitioner submits that mere issuance of notice under Section 143(2) of the Act is not good enough to withhold the refund due under Section 143(1) of the Act. He further submits that the reasons as recorded by the Assessing Officer and approved by the PCIT are nothing but CASS reasons as recorded in notice under Section 143(2) of the Act. He also submits that respondent no.1 could not have styled petitioner's letter dated 15th May, 2020 as a revision petition and, in any event, could not have entertained a revision petition under Section 264 against its own order.

4. On 31st July, 2020, this Court had passed the following order:-

> *"The petition has been heard by way of video conferencing.*
>
> *Learned counsel for the respondent is given liberty to file the judgments that he wishes to rely upon on or before 4th August, 2020. He is also directed to obtain instructions as to whether the respondent is willing to abide by the directions given by this Court in Maple Logistics Private Limited vs. Principal Chief Commissioner of Income Tax, 2019 SCC OnLine Del 10961 and Ericsson India Private Limited vs Additional Commissioner Of Income Tax, Special Range-3, New Delhi & Anr., W.P.(C) 10373/2019 dated 18th February, 2020.*
>
> *List on 7th August, 2020.*
>
> *The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail."*

5. Today Mr.Zoheb Hossain, Advocate appearing for the respondents – Revenue, on instructions states that the respondents, without prejudice to their rights and contentions and without admitting to any illegality are willing to re-consider as to whether Section 241A of the Act is attracted to the present case and pass a fresh order in accordance with the judgments passed by this Court in ***Maple Logistics Private Limited vs. Principal Commissioner of Income Tax, 2019 SCC OnLine Del 10961*** and ***Ericsson India Private Limited vs. Assistant Commissioner of Income Tax, MANU/DE/0763/2020***.

6. Accordingly, we set aside the impugned order dated 01st June, 2020 as well as the reasons given by the Assessing Officer dated 04th February, 2020 and the approval given by the Principal Commissioner of Income Tax dated 06th March, 2020 under Section 241A of the Act. We also grant six weeks' time to the respondents to re-consider the aspect whether the amount found due to be refunded, or any part thereof, is liable to be withheld under Section 241A of the Act, in line with the decisions of this Court, as noted above. The entire consideration, with the approval of the Principal Commissioner of Income Tax to the withholding of the refund amount, or any part thereof, should be completed within six weeks from today, failing which, we direct that without awaiting any further orders, the respondents shall transmit the amount of refund determined under section 143 (1) of the Act along with interest to the petitioner. In the eventuality of the respondents recording any reasons for withholding a part thereof, or the entire amount due for refund to the petitioner under Section 143(1), the reasons thereof as approved by the Principal Commissioner of Income Tax shall be provided to the petitioner

forthwith. It shall be open to the petitioner to take remedial steps in respect of any orders for withholding of refund that may be passed. Needless to state that the reasons recorded for withholding of refund under section 241A of the Act would only amount to a tentative view and would not come in the way of the Assessing Officer to frame the assessment under Section 143(3) of the Act.

7. The writ petition is accordingly disposed of in the above terms. The pending application also stands disposed of.

8. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

SANJEEV NARULA, J

AUGUST 13, 2020
KA