IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of Decision: 28.01.2021

(1) CWP No.17080-2020

MOTOROLA SOLUTIONS INC. ....PETITIONER..

VS.

DEPUTY COMMISSIONER OF INCOME TAX AND ORS.

....RESPONDENTS..

(2) CWP No.17105-2020

MOTOROLA SOLUTIONS INC. ...PETITIONER

VS.

DEPUTY COMMISSIONER OF INCOME TAX AND ORS.

....RESPONDENTS..

(3) CWP No.17128-2020

MOTOROLA SOLUTIONS INC. ...PETITIONER

VS.

DEPUTY COMMISSIONER OF INCOME TAX AND ORS.

....RESPONDENTS..

(4) CWP No.17120-2020

MOTOROLA SOLUTIONS INC. ...PETITIONER

VS.

DEPUTY COMMISSIONER OF INCOME TAX AND ORS.

....RESPONDENTS..

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH

Present : Mr. Rohit Chandel, Advocate,
for the petitioner (s).

Mr. Kunal Sharma, Advocate,
for respondents No.1 to 3.

****

SANT PARKASH , J.

(The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court)

This common order shall dispose of the aforesaid writ petitions bearing CWP Nos.17080, 17105, 17128 and 17210 of 2020 involving common questions of facts and law. The petitioner(s) have filed the present writ petitions under Article 226 & 227 of the Constitution of India, seeking writ in the nature of mandamus for directing the respondents to issue refund including interest on refund calculated upto September 2020 due to the petitioner(s).

For the sake of convenience, the facts are borrowed from CWP No.17080 of 2020. The petitioner is a flagship company of the global Motorola conglomerate, engaged in the business of manufacture, sale and service of telecommunication and satellite equipments including wireless communication system, two-way radios, celular and paging products and services. The petitioner is a tax resident of USA and is duly assessed to tax in USA, while abiding with the tax laws of the various countries worldwide within which it operates. The petitioner filed return of income for the assessment year 2003-04 on 02.12.2003 declaring "Nil" income. The said return was subsequently revised on 01.12.2004 to claim correct amount of TDS credit of INR 8.31 crore as against the TDS credit of INR 1.52 crore claimed in the original return. Thereafter, the income of the petitioner was assessed by the Assessing Officer vide assessment order dated 22.03.2006 at INR 45,76,48,446 as against Nil income returned, alleging that the petitioner had a Permanent Establishment (for short' "PE") in India as per Article 5 of India-US DTAA. Accordingly, raised a demand of INR 11,10,01,811, against which, the petitioner preferred an appeal before the Commissioner of Income Tax (Appeals). Vide order dated 28.03.2018, the Commissioner of Income Tax (Appeals) passed order and relief was given in respect of the additions amounting to INR 35,23,08,838 and further held that no PE is constituted in India by virtue of Article 5 of India-US-DTAA. Appeal effect order was passed pursuant to the CIT(A) order whereby assessed income was reduced from INR 45,76,48,446 to INR 10,53,39,608, thereby reducing the demand from INR 11,10,01,811 to INR 1,63,67,536. Since, a complete credit of taxes was not given in the appeal effect order dated 22.05.2018, rectification application was filed by the petitioner on 28.06.2018. Vide order dated 04.12.2018, the AO after rectification, computed a refund amounting to INR 8,20,49,885 as against the demand of INR 1,63,67,536 earlier raised by the AO in the appeal effect order. Thereafter, another application dated 11.12.2018 was filed by the petitioner with the AO, requesting for the grant of refund determined as per the rectification order. The petitioner filed various letters and made various visits to the department to request and follow-up for the release of refunds. During this course, the petitioner was verbally informed that refunds have been processed by the AO manually considering the fact that return was filed manually. However, the CIT directed to AO to process the refund online and refused to approve manual refund. Then the petitioner started following up with the AO for online processing, but petitioner was informed verbally that refunds were processed by AO seeking approval of Additional Commissioner of Income Tax and refund is now pending with Central Processing Centre for its release, but till date no refund was actually released by the CPC. On 22.01.2020, the petitioner filed its grievance with the online portal requesting to direct the department to take immediate action for release of tax refunds but the said grievance was closed stating that separate applications are required to be filed for each of the assessment year. The petitioner again filed separate grievance letters seeking same relief and vide order dated 06.07.2020, CPGRAM ordered refund amounting to INR 3,50,35,301 instead of INR 8,20,49,885 (excluding interest). The huge amount of refund, despite having been determined by the AO vide order dated 04.12.2018 passed under Section 154 read with Section 143(3) of the Act, have subsequently been reduced vide the CPGRAM disposal order dated 06.07.2020, without giving any reasons/intimation to the petitioner. Even the amount of refund agreed to be paid to the petitioner vide CPGRAM disposal order dated 06.07.2020 has not been credited to the bank account of the petitioner till date.

During the course of arguments, it has been brought to the notice of this Court that the principal amount and due interest upto November 2019 has already been processed and released in favour of the petitioner(s). It is fairly conceded by the learned counsel for the respondents that the process of computing the interest w.e.f. December

2019 till the date of payment is under process and shall be completed within four weeks positively.

In view of the conceded position, we are of the considered view that all the petitions have been rendered infructuous. Ordered accordingly. However, it is made clear that if, there is any difference in calculation or any clarification is required, the parties shall be at liberty to file the miscellaneous application in this regard.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

28.01.2021
sonika

whether speaking/reasoned: Yes/No
whether reportable: Yes/No