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

\+ **W.P.(C) 9063/2020**

FIS PAYMENT SOLUTIONS AND SERVICES INDIA PRIVATE LIMITED ..... Petitioner

Through: Mr.Ajay Vohra, Sr. Advocate with Mr.Ankul Goyal, Advocate.

versus

ASSISTANT COMMISSIONER OF INCOME TAX 7 1 ..... Respondent

Through: Mr.Ruchir Bhatia, Advocate with Ms.Mansie Jain, Advocate.

Date of Decision: 26th November, 2021

**CORAM:**
**HON'BLE MR. JUSTICE MANMOHAN**
**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**O R D E R**

% **26.11.2021**

On 8th July, 2021, this Court had passed the following order:

*"The petition has been heard by way of video conferencing.*

*Mr. Ruchir Bhatia, learned counsel for the respondentstates that after the last date of hearing, a sum of Rupees Seventy Two Crores (Rs. 72 crores) has been refunded on account of excess TDS deposit by the petitioner. He further states that an additional sum of Rupees Twelve Crores (Rs. 12 crores) has been refunded on account of computational error in demand notice. He, however, states that the instructions are awaited in respect of expenditure incurred towards Employee Stock Ownership Plan.*

*Learned counsel for the petitioner confirms the receipt of refund of Rs.72 crores as well as Rs.12 crores.*

*At the request of learned counsel for respondent,Mr. Ruchir Bhatia, adjourned to 16th September, 2021.*

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

Mr. Ajay Vohra, learned senior counsel for the petitioner, submits that the Assessing Officer had erroneously made an addition of Rs.22,30,00,000/- in respect of expenditure incurred towards Employees Stocks Ownership Plan contrary to the judgment rendered by this Court in ***CIT Vs. Lemon Tree Hotels Ltd. (IT Appeal No. 107/2015)*** on ***18th August, 2015***.

Mr. Ruchir Bhatia, learned counsel for the revenue states that the judgment of this Court in ***CIT Vs. Lemon Tree Hotels Ltd.*** (supra) is pending challenge before the Apex Court.

Mr. Ajay Vohra, learned senior counsel for the petitioner states that there is no stay of the judgment of this Court in ***CIT Vs. Lemon Tree Hotels Ltd.*** (supra).

In the opinion of this Court, as there is no stay of the judgment passed by this Court in ***CIT Vs. Lemon Tree Hotels Ltd.*** (supra), the petitioner is entitled to refund of tax on account of expenses incurred towards Employees Stocks Ownership Plan to the extent it has been adjusted. The Assessing Officer is directed to refund the adjusted amount within eight weeks.

With the aforesaid direction, the present writ petition stands disposed of.

List the matter for compliance on 1st February, 2022.

**MANMOHAN, J**

**NAVIN CHAWLA, J**

**NOVEMBER 26, 2021/**TS

Signature Not Verified
Digitally Signed
By:KRISHNA BHOJ
Signing Date:29.11.2021
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