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

\+ W.P.(C) 10886/2022

TRUEBLUE INDIA LLP ..... Petitioner

Through: Ms.Ananya Kapoor, Advocate.

versus

DEPUTY/ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 43-1 & ORS ..... Respondents

Through: Mr.Sunil Agrawal, Sr.Standing Counsel for the Revenue with Mr.Tushar Gupta and Mr.Uthkarsh Tiwari, Advocates.

% Date of Decision: 28th July, 2022

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J (Oral):

C.M.No.31680/2022

Exemption allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

W.P.(C) No.10886/2022

1. Present writ petition has been filed challenging the Order dated 15th June, 2022 passed under Section 241A of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'). Petitioner further seeks a direction to the Respondents to issue refund of Rs. 19,70,42,170/- along with up-to-date interest.

2. Learned counsel for the Petitioner states that the Respondents vide e-mail dated 27th January, 2022 confirmed that the Income Tax Return has been processed and refund along with interest amounting to Rs.21.80 crore under Section 244A of the Act has been determined as due to the Petitioner. She states that the refund due to the Petitioner was liable to be released at the time of processing of the return under Section 143(1) of the Act. She emphasises that Section 143(1) of the Act is mandatory in nature and binding and uses the expression "shall". However, she states that despite the clear statutory provision, no refund has been issued to the Petitioner till date.

3. Learned counsel for the Petitioner emphasises that the impugned order only states that claim of deduction under Section 10AA of the Act needs to be verified and it is likely to result in huge demand. She contends that the impugned order is bereft of any reasoning as to why the refund should be withheld.

4. She further states that the impugned order is also factually incorrect as it states that the assessee has claimed deduction under Section 10AA of the Act for Rs.10,95,87,033/- and this is the first year of claim as new SEZ unit has been set up.

5. Learned counsel for the petitioner points out that there are two SEZ units i.e. Unit 1 (old unit) and Unit 2 (new unit). She states that for the Unit 1, this is the fourth year of claim and for this SEZ unit, the deduction under Section 10AA of the Act has already been allowed in earlier years by the Respondents i.e. Assessment Years 2017-18 and 2018-19. She states that for Unit 2, this is the first year of claim. Hence, according to her, the question of allowability of deduction under Section 10AA of the Act for

SEZ Unit 1 does not arise as the same is already accepted by the Respondents.

6. She emphasizes that Rs.10,95,87,033/- is the total deduction claimed under Section 10AA of the Act, out of which, Rs.10,44,91,121/- pertains to the old unit i.e. Unit 1, while Rs.50,95,912/- pertains to the new unit i.e. Unit 2. Consequently, according to her, over 95% of the deduction under Section 10AA of the Act pertains to the old Unit 1, the deduction of which already stands accepted by the Respondents by virtue of Orders passed under Section 143(3) of the Act for the previous assessment years.

7. Issue notice. Mr.Sunil Agrawal, learned Senior Standing Counsel accepts notice on behalf of the Respondents.

8. He has handed over an e-mail dated 31st May, 2022 written to him by the Jurisdiction Assessing Officer. The relevant portion of the said e-mail, after redacting the name of the officers in question is reproduced hereinbelow:-

Email dated 31st May, 2022

"The assessee LLP has claimed huge deduction u/s. 10AA ofRs.10,95,87,033/- and the claim needs to be considered for thorough verification during scrutiny as the case is selected for complete scrutiny involving claim of huge deduction u/s.10AA with consequent result of refund. The asses see LLP has started a new SEZ during FY.2019-20 with effect from 01.01.2020. The claim of deduction u/s. 1 0AA in new SEZ along with the income admitted from SEZ unit and non-SEZ unit needs thorough verification in the pending scrutiny assessment proceedings.

In view of the facts of case and the assessee 's claim of deduction u/s. 10AA is for 1st year the same needs to be considered for invocation of provisions u/s. 241A so as to withhold the refund till completion of pending scrutiny assessment proceedings. The scrutiny assessment proceedings are likely to result in substantial

demand consequent to such verification of claim of deduction u/s.1 0AA as per the provisions of I.T. Act.

In view of the comprehensive reasons mentioned above and also in view of provision of section 241A of I.T. Act the claim is considered for withholding of refund u/s. 241A by the Hon 'ble Pr. Commissioner of Income Tax, xxxxxx vide email approval dated 12.04.2022 communicated to the concerned Faceless Assessing Officer (FAO) directing to withhold refund u/s. 241A of the I.T. Act. The copy of detailed email approval granted by Pr. Commissioner of Income Tax, xxxxxxxx is herewith enclosed for kind perusal and placed on record.

In view of the above facts, it is humbly requested to represent the same before the Hon 'ble High Court of Delhi not to hold assessee 's plea whatsoever in withholding the refund as per the law and as per the provisions of section 241A of I.T. Act as the same is devoid of merit.

Yours faithfully
xxxxxxx"

9. Having heard the learned counsel for the parties, this Court is of the view that an Order under Section 241A of the Act cannot be passed in a mechanical and routine manner. Refunds cannot be withheld just because the Notice under Section 143(2) of the Act has been issued and the Respondents want to verify the claim for deduction under Section 10AA of the Act. In the present case the impugned Order under Section 241A of the Act is a generic Order and no attempt has been made by the Respondents to substantiate how the grant of the refund is likely to adversely affect the Revenue.

10. It is settled law that the refund due to the Petitioner is liable to be released at the time of issuance of the intimation/order under Section 143(1) of the Act unless an Order for withholding of refund has been passed under

Section 241A of the Act explicitly recording that the grant of refund is likely to adversely affect the Revenue. This Court in ***Maple Logistics (P.) Ltd. Vs. Principal Chief Commissioner of Income Tax, 2019 SCC OnLine Del 10961*** has held as under:-

> *"28. With this backdrop, we now consider the situation at hand. Here the return has been filed on 25.10.2017 for AY 2017-2018 and, therefore, the amended provisions would be applicable. In our considered opinion, the AO has completely misunderstood the refund mechanism and the import of Section 241A of the Act. The legislative intent is clear and explicit. The processing of return cannot be kept in abeyance, merely because a notice has been issued under section 143(2) of the Act. Post amendment, sub-section (1D) of section 143 is inapplicable to returns furnished for the AY commencing on or after 1st Day of April 2017. The only provision that empowers the AO to withhold the refund in a given case presently, is section 241A. Now the refunds can be withheld only in accordance with the said provision. The aforesaid provision is applicable to such cases where refund is found to be due to the Assessee under the provisions of Sub-Section (1) of Section 143, and also a notice has been issued under Sub-Section (2) of Section 143 in respect of such returns. However, this does not mean that in every case where a notice has been issued under Sub-Section (2) of Section 143 and the case of the Assessee is selected for scrutiny assessment, the determined refund has to be withheld.*
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> *xxx xxx xxx*
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> *30. The AO is duty bound to process the refund where the same are determined. He cannot deny the refund in every case where a notice has been issued under Sub-Section (2) of Section 143. The discretion vested with the AO has to be exercised judiciously and is conditioned and channelized. Merely because a scrutiny notice has been issued should not weigh with the AO to withhold the refund. The AO has to apply his mind judiciously and such application of mind has to be found in the reasons which are to be recorded in writing. He must make an objective assessment of all*

the relevant circumstances that would fall within the realm of "adversely affecting the revenue".

31. In the present case, the AO has completely lost sight of the words in the provision to the effect that, "the grant of the refund is likely to adversely affect the revenue". The reasons that are relied upon by the Revenue to justify the witholding of the refund in the present case, are abysmally lacking in reasoning. Except for reproducing the wordings of Section 241A of the Act, they do not state anything more. The entire purpose of Section 241A would be negated, in case the AO was to construe the said provision in the manner he has sought to do. It would be wholly unjust and inequitable for the AO to withhold the refund, by citing the reason that the scrutiny notice has been issued. Such an interpretation of the provision would be completely contrary to the intent of the legislature. The AO has been completely swayed by the fact that since the case of the assessee has been selected for scrutiny assessment, he is justified to withhold the refund of tax.

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33. Therefore, merely because a notice has been issued under section 143(2), it is not a sufficient ground to withhold refund under section 241A and the order denying refund on this ground alone would be laconic. Additionally, the reasons which are to be recorded in writing have to also be approved by the Principal Commissioner, or Commissioner, as the case may be and this should be done objectively."

(emphasis supplied)

11. Subsequently, in ***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*** this Court has held as under:-

"18. The refund of amounts claimed – where they appear justified, by itself cannot be said to be adverse to the interest of the revenue. The interest of revenue lies in collecting revenue in a legal and

justified manner. It does not lie in retaining the collected taxes in excess of what is justified, since the excess collection cannot even be properly termed as "revenue". The excess collection of tax is a liability of the State and it lies in the interest of the revenue of the State to discharge its interest bearing liability without any delay. The sovereign cannot, but, be seen as fair, honest and credible in its dealings with its subjects. Any lapse in this regard tarnishes the image and credibility of the sovereign. It certainly cannot act like any unscrupulous businessman, who is seen to dodge his liabilities by resort to frivolous excuses and devious ways."

12. Keeping in view the aforesaid mandate of law, this Court is of the view that the impugned Order lacks sufficient reasoning to hold that the Revenue would be adversely affected by the grant of refund. Accordingly, the impugned Order dated 15th June, 2022 passed under Section 241A of the Act is quashed and the matter is remanded back to the Office of the Assistant Commissioner of Income Tax Circle 43(1), Delhi with a direction to pass a fresh speaking order within six weeks.

13. However, as the tax amount payable on the disputed amount of Rs.10.95 crore (being the claim for deduction under Section 10AA) under Section 115JB would be Rs.2,36,14,691/- and under the normal provisions of Act would be Rs.3,82,94,093/-, this Court is of the view that even if the higher amount of the aforesaid amounts is withheld, the Petitioner would still be entitled to refund of Rs.16,68,98,449/- forthwith along with applicable interest under Section 244A of the Act (which we are informed totals to Rs.2,42,00,275/- till 01st August, 2022).

14. Consequently, till the Assistant Commissioner of Income Tax Circle 43(1), Delhi passes a fresh Order within the stipulated time, this Court directs the Respondents to refund Rs.16,68,98,449/- along with applicable

interest under Section 244A of the Act till the date of refund within two weeks.

15. With the aforesaid directions, present writ petition stands disposed of. Needless to state, the assessment proceedings shall go on without being influenced by any observations made by this Court.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

JULY 28, 2022
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