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

Date of Decision: 14.10.2019

\+ **W.P.(C) 7003/2019**

MAPLE LOGISTICS PRIVATE LIMITED &ANR ..... Petitioner

Through: Mr. Amit Sibal, Senior Advocate with Mr. Sandeep, Mr. Devang and Mr. Ashutosh, Advocates.

versus

PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX & ORS

..... Respondents

Through: Ms. Lakshmi Gurung, Mr. Tushar Gupta, Ms. EashaKadian and Mr. Sidharth Gupta, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE SANJEEV NARULA

SANJEEV NARULA, J. (Oral):

1. Petitioner, by way of the present petition under Article 226 and 227 of the Constitution of India seeks a writ in the nature of Mandamus directing the Respondent to refund the income tax amount on account of excess deduction of tax at source in respect of Assessment Years 2017-18 and 2018-19, and other consequential directions to adjust the outstanding amount of TDS and GST payable by Petitioner Company against the pending refund amount without charging of any interest for the delayed payments.

2. The petition has been disposed of vide another order passed today, whereby certain directions were issued to the Respondent to pass a detailed

reasoned order under Section 241A of the Income Tax Act (hereinafter referred to as 'the Act'). The said order reads as follows:

> *"We have heard learned counsels at length. Learned counsel for the respondents has produced, before us, the relevant file which contains the proforma enlisting the reasons for issuance of notice under Section 143(2) of the Income Tax Act to the petitioner which, she states, were the reasons looked at by the Assessing Officer while putting up his proposal to the Principal Commissioner of Income-Tax for withholding of the refund under Section 241 A. A copy of the relevant documents has been retained. Considering the nature of the controversy and since the preparation of the detailed order is likely to take some time, in view of the urgency, we proceed to dictate the operative part of the order.*
>
> *We find that the exercise undertaken by the respondents under Section 241A of the Act is not in consonance with Section 241A inasmuch, as the Assessing Officer has not given due regard to the facts of the case and he has not applied his mind as to why the refund is likely to adversely affect the revenue. There are no reasons recorded in writing by him to justify withholding of the refund due to the petitioner in terms of Section 143(1) for the assessment year 2017-18 and we also find that the Principal Commissioner of Income Tax, in the present case, while granting his approval has also not examined the reasons for passing the order under Section 241A and the relevant and germane considerations have also not received the attention of the Principal Commissioner of Income Tax.*
>
> *We, accordingly, find that the entire exercise under Section 241A has not been correctly undertaken by the respondents. At the same time, we are conscious of the fact that the Scrutiny Proceedings under Section 143(2) were initiated by issuance of notice, as early as on 17.08.2018 i.e. even before the issuance of the intimation under Section 143(1), which was issued on 16.03.2019.*

We, therefore, grant two weeks time to the respondents to consider the aspect whether the amount found due to be refunded, or any part thereof, is liable to be withheld under Section 241A. While doing so, the Assessing Officer shall, firstly, with reasons, make a prima facie assessment of the probability that additions would be made in the Scrutiny Assessment Proceedings, secondly; he shall make an assessment of the quantum of additions, if any, that may be made to the income returned, and the likely tax effect that such additions may have, thirdly; he should assess the financials and financial standing of the petitioner with regard to its ability to meet and service any demand for tax that may be raised as a result of the Scrutiny Proceedings; and also take into consideration such other factors eg. past demands, any outstanding litigation and the past conduct of the assessee etc. All the aforesaid aspects should be examined to ascertain if the payment of the refund, or any part thereof, are likely to have adverse affect on the Revenue. The order must reflect due application of mind of the Assessing Officer while making a proposal whether, or not, to withhold any part of the refund amount. Such a proposal should be examined by the Principal Commissioner of Income Tax with due application of mind on all the aforesaid aspects. 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 two weeks from today, failing which, we direct that without awaiting any further orders, the respondents shall transmit the amount of Rs. 4,79,93,740/- with interest to the petitioner, upon the petitioner furnishing an undertaking that the said amount shall forthwith be deposited with the GST Authorities. We have laid down the aforesaid time line considering the fact that the refund was found payable as early as on 16.03.2019.

In the eventuality of the respondents recording any reasons for withholding a part of, 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. Needless to state that the reasons recorded for withholding of refund under section 241A 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.

The petition stands disposed of in the aforesaid terms.

The detailed reasons/ order shall be recorded separately. ”

3. In continuation thereof, by way of this order, we are recording detailed reasons for issuing the said directions.

Brief facts

4. Briefly stated, facts of the case as narrated in the writ petition are that Petitioner Company is engaged in the business of providing multimodal logistics services including transportation through road, rail etc., for its customers. In terms of Section 194C of the Income Tax Act, the customers of the Petitioner are obligated to deduct TDS at the rate of 2% from the transport charges paid or payable to the Petitioner Company. Petitioner claims that in view of the nature of the business, major portion of transportation charges received/receivable are disbursed to the third party service providers. The margins retained by the Petitioner are less than 2% of the total consideration. The TDS deduction of 2% causes financial difficulties, as its margin remains stuck with the government department in the form of TDS, causing acute cash flow constraints. As a consequence thereof, Petitioner is unable to service its customers, lenders and pay its statutory dues in a timely manner.

5. In respect of Assessment Year (AY) 2017-18, on an application made by the Petitioner under Section 197 of the IT Act, requesting for a certificate for

lower rate of TDS at the rate of 0.8% instead of standard rate of 2%, the Assistant Commissioner of Income Tax allowed deduction of TDS at the rate of 1%. On 25.10.2017, Petitioner filed the income tax return for AY 2017-18. On account of operation of Section 115J of IT Act (Minimum Alternate Tax), Petitioner Company was required to pay total income tax of Rs. 68,45,266.00. Since total pre-paid taxes (including TDS of Rs. 5,51,49,566.00) of the Company was Rs.5,56,96,802.00, the Petitioner Company claimed a refund of Rs. 4,88,51,540.00. On 27.03.2018, the Petitioner Company filed a revised income tax return in terms of Section 139(5) of IT Act to reduce the total TDS amount from Rs. 5,51,49,566/- to Rs. 5,42,91,774/- due to non-deposit of TDS by its customers. Accordingly, its refund claim stood revised to Rs. 4,79,93,740/-.

6. Petitioner's case was chosen for scrutiny as per computer aided scrutiny selection. Deputy Commissioner of Income Tax, DCIT Circle 16 (1) (hereinafter "Respondent No. 3"), issued a notice dated 17.08.2018, inter alia, requesting the Petitioner to produce evidence/documents in support of claims made in its return. In response thereto, on 25.09.2018, Petitioner submitted its e-reply along with relevant documents. Petitioner has since not received any hearing notice, or assessment order in terms of Section 143 (3) of the IT Act. Since Petitioner was facing acute financial crunch on account of blockage of funds in the form of excess TDS and delay in processing of tax refund, it filed an online complaint dated 12.11.2018 on the portal of Centralized Public Grievance Redress And Monitoring System and requested Director of Income Tax, Centralized Processing (hereinafter "Respondent No. 2") to expeditiously process the pending income tax return

for AY 2017-18.

7. In the meantime, on 16.03.2019, Respondent No. 2 issued an intimation processing the income tax return filed by the Petitioner under Section 139 of the IT Act, wherein the tax liability of the Petitioner was assessed as Rs. 68,45,266 and the refund amount due to the Petitioner Company for the AY 2017-18 was determined as Rs. 4,79,93,740 along with eligible interest under the section 244A of the Act.

8. Petitioner claims that, similarly, for the Assessment Years 2018-19; AY 2019-20 and AY 2020-21, Petitioner has been filing applications under Section 197 of the IT Act requesting for lower rate of TDS, however, such applications have not been accepted and instead higher rate of TDS has been approved. Petitioner further claims that in respect of AY 2018-19, as per the revised income return dated 31.03.2018, Petitioner is entitled to refund of Rs. 5,50,78,280/- along with interest under Section 244A. Petitioner also claims that as the income tax returns have not been processed, the refund on account of excess TDS has accumulated over the years, which has resulted in causing acute financial crunch and liquidity crisis. This has rendered the Petitioner liable to pay penalties to its vendors and this has also led to issuance of default notices by the banks who have downgraded the CIBIL rating of the Petitioner. Petitioner is unable to deposit the statutory dues of GST in a timely manner and as a result, the GST department has initiated enquiry against the Petitioner.

9. In these compelling circumstances, Petitioner has approached this Court seeking appropriate directions.

10. On an application being filed vide CM (Appl) 40122/2019 seeking early hearing of the petition, Respondent's counsel stated that the refund for the AY 2017-18 has not been granted in view of the order passed under Section 241A of the Act. She further apprised the Court that such an order was not retrievable from the computer system, and efforts were being made to do so. Accordingly, a direction was issued to the Respondents to produce the order recorded under Section 241A of the Act before the Court.

11. Today, Ms. Laxmi Gurung, learned Senior Standing Counsel for the Revenue apprises the Court that as per the records, the reason for not granting the refund is that a notice under sub-Section(2) of Section 143 in respect of AY 2017-18 has been issued and, as a consequence, in accordance with Section 241A of the Act, the Assessing Officer, with the prior approval of the Principal Commissioner, has withheld the refund up to the date the assessment is made. Ms. Gurung further submitted that the Assessing Officer has also relied upon the reasons which were recorded for selecting the case of the Petitioner for scrutiny under Section 143 (2) of the Act to justify the withholding of the refund claim of the Petitioner. Respondent also produced the original file and on its perusal we find that the following reasons have been recorded in terms of Section 241 A of the Act:

> *"As per the ITBA Database below remarks are given by the different authorities:*
>
> *1. 11450354 _AO Remarks: The case of assessee is under scrutiny u/s. 143(3). Thereis possibility of generation of additional demand which may be adjusted against therefund in future.*
>
> *2. 11300268_RANGE Remarks: The proposal of AU u/s 241A to*

with hold refund tillregular assessment u/s 143(3) is submitted for kind approval.

3. 11200044_ CIT Remarks: Assessment is pending and there is likelihood of creationof demand. Hence, refund may be withheld as proposed."

12. Mr. Amit Sibal, learned Senior Counsel appearing on behalf of the Petitioner has strongly urged that the Respondents have no justification for withholding the refund for AY 2017-18, as the return for the said year has been processed under Section 143(1) of Act vide intimation dated 16.03.2017, whereby the Petitioner has been found eligible for refund of Rs. 4,79,93,740/- along with eligible interest under Section 244A of the Act. He argued that the Respondent is, therefore, bound to release the refund amount for the said year. He submits that mere issuance of notice under section 143(2) of the Act in respect of the Assessment Year 2017-2018 cannot, ipso facto, provide a valid justification to withhold the payment of the refundable amount on account of deduction and deposit of higher tax at source. This, he submits, is not the scheme of section 241A of the Act.

13. Learned Senior Standing Counsel for the Revenue, on the other hand, argued that the Petitioner has suppressed material facts from the Court. She argued that the Petitioner was aware of the reasons for withholding the refund determined under Section 143(1) of the Act as the same finds mention in the intimation issued under Section 143 (1)(d) of the Act dated 16.03.2019 for AY 2017-18. Petitioner has deliberately concealed this fact and has, instead, approached the Court for directions for the refund of the amount determined under Section 143(1) of the Act without impugning the

aforesaid reasons. The disclaimer recorded in fine print on the intimation reads as under:-

> *"The refund determined u/s 143(1) in this Intimation has been withheld as per the provisions of section 241A of Income Tax Act, 1961. The refund, if any,will be released on completion of assessment u/s 143(3)/144 as the case may be, along with interest u/s 244A andsubjectto adjustment of arrear demand, if any u/s 245. Please contact the Assessing Officerfor more details."*

Analysis

14. We have given due consideration to the rival contentions of the parties. Before proceeding further, it would be beneficial to analyze the legislative history, leading to the introduction of section 241A.

15. The power to withhold refund was earlier envisaged in Section 241 of the Act (omitted w.e.f. 01.06.2001), which read as under:

> *"241. Power to withhold refund in certain cases. – Where refund of any amount becomes due to the assessee as a result of an order under this Act or under the provisions of subsection (1) of section 143 after a return has been made under section 139 or in response to a notice under sub-section (1) of section 142 and the Assessing Officer is of the opinion, having regard to the fact that–*
>
> *(i) a notice has been issued, or is likely to be issued, under sub-section (2) of section 143 in respect of the said return ; or*
>
> *(ii) the order is the subject-matter of an appeal or further proceeding ; or*
>
> *(iii) any other proceeding under this Act is pending,*

that ***the grant of the refund is likely to adversely affect the revenue****, the Assessing Officer may, with the previous approval of the Chief Commissioner or Commissioner, withhold the refund till such time as the Chief Commissioner or Commissioner may determine"*

16. After the omission of the aforesaid provision, process of refund was governed by Section 143(1D) of the Act. The said provision as it existed prior to the amendment by the Finance Act 2017 w.e.f 01.04.2017 (hereinafter "the 2017 amendment"), read as under:-

"(1D) Notwithstanding anything contained in sub-section (1), the processing of a return shall not be necessary before the expiry of the period specified in the second proviso to sub-section (1), where a notice has been issued to the assessee under sub-section (2):
Provided *that such return shall be processed before the issuance of an order under sub-section (3)."*

17. After the amendment, the said provision reads as under:-

"(1D) Notwithstanding anything contained in sub-section (1), the processing of a return shall not be necessary, where a notice has been issued to the asssessee under sub-section (2):
Provided that the provisions of this sub-section shall not apply to any return furnished for the assessment year commencing on or after the 1st day of April, 2017*."*

18. The aforenoted amendment was simultaneous to the insertion of Section 241A by the Finance Act 2017 w.e.f. 01.04.2017, which reads as under:

> "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."

19. Section 241A provides that where there is a refund payable on the returns furnished under Section 143 (1) of the Act, and the Assessing Officer is of the opinion that grant of refund is likely to adversely affect the revenue, he may withhold the refund up to the date on which the assessment is made, subject to reasons to be recorded in writing and with the previous approval of the Principal Commissioner or Commissioner, as the case may be. On a combined reading of Section 143, (pre and post amendment) with section 241A, it can be discerned that by virtue of the new proviso, it is now mandatory to process the return under sub-section (1) of section 143, and proceed with grant of the refund determined therein, unless, sufficient reasons exist under Section 241A showcasing that the grant of refund is likely to adversely affect the revenue.

20. It may also be noted that in Section 241, the reason that "grant of refund is likely to adversely affect the revenue" was, inter alia, one of the grounds mentioned for withholding of refund. However, in the newly inserted Section 241A, adverse effect on the revenue is the sole ground for such withholding. Therefore, the scope of the power has been further narrowed,

making it clear that a speaking order is required to be passed culling out the reasons as to how the grant of refund is likely to affect the Revenue.

21. At this juncture, it would be meaningful to refer to the case law in the context of older section 241, since it also uses the words "***likely to adversely affect the revenue"***. In several decisions it has been held that the order withholding refund must essentially reflect that the grant of refund is likely to <u>*adversely affect the revenue*</u>. Reference may be made to the decisions in ***Ashwin D Mehta (HUF) v. Commissioner of Income Tax, (1995) 215 ITR 411(Gujarat), Naurata Ram v. Commissioner of Income-tax, (1998) 100 TAXMAN 266 (PUNJ. & HAR.), Shreyans Industries Ltd. v. Commissioner of Income-tax, (1998) 101 TAXMAN 498 (PUNJ. & HAR.)***, ***Pioneer Sports Works (P.) Ltd. v. Commissioner of Income Tax, (1997) 94 TAXMAN 29 (PUNJ. & HAR.)***.

22. The question, that arises for consideration is the present case, is as to the scope and ambit of the newly inserted provision- Section 241A. The same has been elaborately discussed by the Gujarat High Court in ***Corrtech International (P) Ltd. v Deputy Commissioner of Income Tax, (2017) 86 Taxmann.com 156 (Gujarat)***, relevant portion whereof is extracted hereinbelow:

> ***15.*** *A combined reading of the said provisions and in particular, sub-section (1D) of section 143 would demonstrate that once a notice under sub-section (2) of section 143 is issued, it would be discretionary for the Assessing Officer to process the return under section 143(1).* ***The time limit envisaged in the further proviso to sub-section (1) would not apply but that the same can be done only before issuance of the order of assessment under sub-section (3).***

16. *Under such provision, therefore, it would be open for the Assessing Officer to process the return under section 143(1) and, if the culmination of such exercise is to deny a refund to the assessee, send such an intimation, as provided, under the proviso to sub section (1).* ***Once however the time frame envisaged in the further proviso to sub-section (1) expires and is not extended by virtue of the operation of sub-section (1D) of section 143, there would be no scope thereafter for the Assessing Officer to withhold the refund arising out of the return filed by the assessee****.*

17. *This position would become clear if we compare the provisions of section 143(1D) as amended by the Finance Act, 2017 read with newly inserted Section 241A. Under the new sub-section (1D) the legislature provides that notwithstanding anything contained in sub-section (1) the processing of return would not be necessary where a notice has been issued to an assessee under sub section (2).* ***This would make it clear that once notice under section 143(2) has been issued, the Assessing Officer shall not process the return under section 143(1). The original proviso to sub-section (1D) has been substituted by a new proviso under which it is clarified that the proviso under said sub-section shall not apply to any return furnished for the assessment year commencing on or after 01.04.2017. Section 241A which was inserted simultaneously, now enables the Assessing Officer to withhold the refund in favour of the assessee which becomes due in terms of sub-section (1) of section 143 if he is of the opinion that having regard to the fact that a notice has been issued under sub-section (2) of section 143 that the grant of refund is likely to adversely affect the Revenue, he would, however, do so by recording reasons in writing and with previous approval of the Principal Commissioner or Commissioner and withhold such refund till the date the assessment is made. We may recall that Section 241 which was omitted w.e.f. 01.06.2001 previously enabled the Assessing Officer to withhold the refund which becomes due and payable in terms of sub-section (1) of section 143 under certain circumstances including in a situation where a notice has been issued or is likely to be issued under sub-section (2) of***

section 143 of the Act and the Assessing Officer is of the opinion that the grant of refund is likely to adversely affect the Revenue.”

(Emphasis supplied)

23. On a perusal of the new proviso added to sub-section (1D), it becomes evident that said sub-section providing for extension of time limit for processing of return in cases where section 143(2) notice has been issued, will not apply to any return furnished for the assessment year commencing on 01.04.2017. The intention of introducing Section 241A simultaneous with the insertion of the aforenoted proviso was to address the grievance of the assessees relating to delay in issuance of refund in genuine cases which are routinely selected for scrutiny assessment. However, at the same time, to address the concern of recovery of revenue in doubtful cases, the legislature introduced Section 241A,which enables the Assessing Officer to withhold the refund in favour of the assessee which becomes due in terms of sub-section (1) of section 143, if he is of the opinion that having regard to the fact that a notice has been issued under section 143(2), the grant of refund is likely to adversely affect the revenue. He would, however, do so by recording reasons in writing and with previous approval of the Principal Commissioner, or Commissioner, and withhold such refund till the date the assessment is made.

24. The issuance of notice under Section 143(2) of the Act has often been cited as a ground for withholding of refund and it would also be profitable to note views of the court in pre-amendment scenario. In ***Tata Teleservices v Central Board of Direct Taxes*** (2016) 386 ITR 30, held that in the event a notice is issued under section 143(2), it will be a matter of discretion of the

concerned AO whether he should process the return or not. The relevant portion is extracted as under :

> "*23.The real effect of the instruction is to curtail the discretion of the AO by 'preventing' him from processing the return, where notice has been issued to the Assessee under Section 143(2) of the Act.* ***If the legislative intent was that the return would not be processed at all once a notice is issued under Section 143 (2) of the Act, then the legislature ought to have used express language and not the expression "shall not be necessary".*** *By the device of issuing an instruction in purported exercise of its power under Section 119 of the Act,* ***the CBDT cannot proceed to interpret or instruct the income tax department to 'prevent' the issue of refund.In the event that a notice is issued to the Assessee under Section 143 (2) of the Act, it will be a matter the discretion of the concerned AO whether he should process the return.***"

25. Further, in ***Group M Media India Pvt. Ltd. v Union of India, (2016) 388 ITR 594***, the Bombay High Court observed that, the Assessing Officer is required to independently apply his mind and take a decision in terms of section 143(1D) whether, or not, to grant a refund in the facts and circumstances of the Petitioner's case. Thus, prior to the amendment, though the discretion rested with the Assessing officer whether, or not, to process the refund, however, the same could not be exercised merely because a notice under section 142(2) stood issued.

26. We would also like to refer to the judgment in the case of ***Pulp N'Pack Private Ltd. v Commercial Tax Officer, MANU/AP/0094/2009***, where the High Court of Andhra Pradesh dealt with the normative range of circumstances that could be considered as having "adverse effect on the revenue" within the meaning of the said expression in section 33C of the

Andhra Pradesh General Services Tax Act, 1957. It was held therein that every refund where dues consequent on an order giving rise to a refund cannot be considered as adversely affecting the revenue. Looking at the decisions in ***Consolidated Petrotech Industries v. Assistant Commissioner of Income Tax, (1993) 202 ITR 306 (Guj)***, ***Shreyansh Industries Ltd. v. Commissioner of Income Tax, MANU/PH/0987/1998*** and ***Gannon Dunkerley& Co. Ltd. v Sales Tax Officer, (2003) 133 STC 534***, the Court observed as follows:

> *"67. Pasayat, J. (as His Lordship then was) in Gannon Dunkerley& Co. Ltd. (supra) observed that an opinion means a judgment, belief or conviction resulting from what one think on a particular question. This should be passed on grounds short of proof. If one is to form an opinion and the opinion is to govern, he must form it himself on such reasons and grounds as seen good to him.* ***Mere filing of an appeal or pendency of further proceedings under the Act can not per se be a ground for withholding a refund. The opinion that grant of refund is likely to adversely affect the revenue must be formed. In the facts of the case before it the Orissa Division Bench in Gannon Dunkerley&Co. Ltd. concluded that the revenue/assessing authority must be in possession of all relevant material which are relevant for taking a decision (to withhold the refund). Financial stability, creditworthiness are relevant considerations when considering the question whether grant of refund would adversely affect the revenue, observed the Bench.***
>
> *68. In Shreyans Industries Ltd. (supra) the court observed that the singular fact that an order (giving rise to a refund) is under challenge either before the Tribunal or the High Court is not a ground to withhold the refund or to reach a conclusion that the refund would adversely affect the revenue. The court found that while a huge amount was withheld on the mere ground of a pending appeal before the Tribunal, no material was available on record which justified withholding of the refund. The court*

observed that the petitioner was not found to be in default of any payment of income tax dues or even in the matter of filing of returns. Consequently the order withholding the refund was quashed.

69. From the cases that come before this Court involving exercise of the power Under Section 33C of the Act of 1957, there is apparent, as in this batch of cases, a mechanical approach to the exercise of the structured grant of discretionary power. ***Often, an order withholding the refund merely reproduces the statutory phrase that grant of refund would adversely affect the revenue****."*

(Emphasis supplied)

27. In the said judgment, it was also noted that the condition of obtaining previous approval of the Commissioner is one of the conditions for withholding of refund and is in the nature of procedural prescription, legislatively intended to provide a check on possible arbitrary exercise of discretion by the assessing or licensing authority, as the case may be, by enjoining that the exercise of discretion be preceded by the previous approval of a higher authority. Reference may be made to the relevant paras as under:

"The other structural condition as to the prior approval of a higher authority is, as already observed, legislatively intended to operate as a check on what would otherwise have been the sole discretion of the assessing authority. The provisions of Section 33C are in parimateria borrowed from Section 241 of the Income Tax Act 1961 (omitted by the Finance Act 2001, w.e.f. 1.1.2001). ***Another legislative intendment of the prescription (that the order must be preceded by the approval of higher authority), appears to be that the assessing authority ought not exclusively be conferred the discretion, as the exercise of such discretion in the event of the eventual success of the assessee would mulct the exchequer with the liability to interest for the period the***

***refund is withheld**."*

(Emphasis supplied)

CONCLUSION

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.

29. The legislature has not intended to withhold the refunds just because scrutiny assessment is pending. If such would have been the intent, Section 241A would have been worded so. On the contrary, section 241A enjoins the

AO to process the determined refunds, subject to the caveat envisaged under Section 241A. The language of section 241A envisages that the aforesaid provision is not resorted to merely for the reason that the case of the assessee is selected for scrutiny assessment. Sufficient checks and balances have been built in under the said provision and same have to be given due consideration and meaning. An order under section 241A should be transparent and reflect due application of mind.

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.

32. The power of the AO has been outlined and defined in terms of the Section 241A and he must proceed giving due regard to the fact that the refund has been determined. The fact that notice under section 143(2) has been issued, would obviously be a relevant factor, but that cannot be used to ritualistically deny refunds. The AO is required to apply its mind and evaluate all the relevant factors before deciding the request for refund of tax. Such an exercise cannot be treated to be an empty formality and requires the AO to take into consideration all the relevant factors. The relevant factors, to state a few would be the prima facie view on the grounds for the issuance of notice under section 143(2); the amount of tax liability that the scrutiny assessment may eventually result in vis-a-vis the amount of tax refund due to the assessee; the creditworthiness or financial standing of the assessee, and all factors which address the concern of recovery of revenue in doubtful cases.

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.

34. Thus in view of the foregoing discussion, the entire exercise under Section 241A has not been correctly undertaken by the respondents. The petition is disposed of and the directive portion of the judgment as recorded in the order dated as dictated in the open Court must be duly adhered by the parties.

Corrected and uploaded on 4th November 2019

SANJEEV NARULA, J

VIPIN SANGHI, J

OCTOBER 14, 2019
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