

via Video Conferencing

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Delivered On: 04.06.2020

W.P.(C) 2243/2020 & CM APPL.11500/2020 (for directions)

M/S. FIS PAYMENT SOLUTIONS & SERVICES

INDIA PRIVATE LIMITEDPetitioner

versus

**DEPUTY COMMISSIONER OF INCOME TAX
& ANR.**

.....Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Deepak Chopra, Ms. Akansha Aggarwal and
Mr. Ankul Goyal, Advocates

For the Respondents : Mr. Ruchir Bhatia and Mr. Shlok Chandra,
Advocates

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE TALWANT SINGH

J U D G M E N T

SIDDHARTH MRIDUL, J. (OPEN COURT)

1. The present writ petition under Articles 226/227 of the Constitution of India, instituted on behalf of the petitioner, prays as follows:-

- (a) Issue a writ of mandamus or any other appropriate writ directing the Respondent/s to release the refund of INR 74,88,99,152/- along with

applicable interest under section 244A of the Act, till the date of issuance of refund, for Assessment Year 2018-19;

- (b) Pass such other orders which this Hon'ble Court may deem fit and proper on the facts and in the circumstances of the case.

2. With the consent of the learned counsel appearing on behalf of the parties, the present writ petition is taken up for hearing today.

3. We have heard learned counsel appearing on behalf of the parties.

4. Mr. Deepak Chopra, learned counsel appearing on behalf of the parties invites our attention to the order passed by this Court on 03.03.2020 in the present writ petition. The same is extracted hereinbelow:-

“Issue notice. Mr. Bhatia accepts notice.

The petitioner seeks refund of the tax from the respondents. In relation to the Assessment Year 2017-18, the petitioner's assessment has been completed under Section 143(3) of the Income Tax Act. So far as the Assessment Year 2018-19 is concerned, the petitioner's return, as filed, has been processed under Section 143(1) of the Income Tax Act. The amount due towards refund for both the assessment years is substantial. Prima-facie, it appears that there is no justification for the respondents not granting the refund when the same is due.

We, therefore, direct the respondents to refund the amounts for both the assessment years along with interest as applicable, to the petitioners within four weeks from today. In case the respondents have any valid justification

for withholding the refund, or any part thereof, they shall file their counter-affidavit positively within the same period clearly stating as to why the refund/ partial refund is not due. No further time shall be granted for the said purpose.

List on 06.05.2020.”

5. On the same day i.e. 03.03.2020, the Deputy Commissioner of Income Tax, Circle-9(1) addressed a communication to the Principal Commissioner of Income Tax, Delhi -3, which reads as follows:-

OFFICE OF THE DEPUTY COMMISSIONER OF INCOME
TAX, CIRCLE 9(1), ROOM NO.178, 1ST FLOOR, C.R.
BUILDING, I.P. ESTATE, NEW DELHI-02

F.No.DCIT/Cir.-9(1)/2019-20/296

Dated: 03/03/2020

To,

The Pr. Commissioner of Income Tax,
Delhi-03
New Delhi-110 002

(Through Addl. CIT Range-9, New Delhi)

Respected Sir,

Sub: Withholding of refund in the case of M/s FIS Payment Solutions & Services India Pvt. Ltd. for the A.Y. 2018-19 – Reg.

Kindly refer to the above mentioned subject.

It is seen from the records that assessee company M/s FIS Payment Solutions & Services India Pvt. Ltd. (AACCC5587F) had filed its ROI for the relevant year on 30.11.2018 vide acknowledgement Number 382938831301118. The return has been processed under Section 143(1) (a) of the I.T. Act and a refund of Rs.748899152/- has been determined by the CPC.

In this regard, it is important to note that the case of the assessee Company has been selected for complete scrutiny for the

assessment year 2018-19 on the basis of following computer aided scrutiny selection reasons/issues:

- (i) Large expenditure by way of penalty or fine for violation of any law for the time being in force.
- (ii) Low receipt from house property in ITR as compared to rental receipts in 26AS.
- (iii) Claim of large value refund.
- (iv) Large “any other amount allowable as deduction” claimed in schedule BP of return.
- (v) Introduction/addition of high value intangible asset during the year.
- (vi) Non compliance to Income Computation & Disclosure Standards.

Thus, there are several critical issues to be examined during the course of assessment proceedings and the revenue is of the view that grant of refund may adversely affect the recovery of revenue.

It is also seen from the records that in AY 2017-18 the assessment of the assessee company was carried out which resulted in addition to the tune of Rs.90,31,04,360/-. The copy of the assessment order is enclosed for kind perusal.

Further, the Finance Act, 2017 has inserted Section 241A to protect the interest of revenue allowing withholding of the refund in the case where the scrutiny assessment is pending and the revenue is of the view that grant of refund may affect the recovery of taxes later.

The explanatory notes to the provisions of the Finance Act, 2017 had explained the provisions of Section 241A of the Act. The relevant part of the explanatory notes reads as under:-

“However to address concern of recovery of revenue in doubtful cases, a new section 241A has been inserted in the Income Tax Act to provide that, for the returns furnished for assessment year commencing on or after 1st April, 2017, where refund of any amount becomes due to the assessee under Section 143(1) of the Income Tax

Act and the Assessing Officer is of the opinion that grant of refund may adversely affect the recovery of revenue, he may, for the reasons recorded in writing and with the previous approval of the Principal Commissioner or Commissioner withhold the refund up to the date on which the assessment is made.

Thus, in view of the provisions of Section 241A of the IT Act, 1961, and on the facts of the case, the AO is of the opinion that granting of refund may adversely affect the recovery of taxes as the case of the company has been selected for the complete scrutiny on the basis of 06 critical reasons and has a history of huge additions in earlier years. Thus the assessment may result into creation of demand and the taxes would require to be recovered from the company. It is further to be noted that each year is treated as separate year under the provision of Income Tax law and it is not mandatory that the demand shall not be raised in this year, if it has not been raised in earlier years.

In view of the above it is requested that the refund in assessee company case for AY 2018-19 may be withhold upto the date of assessment so that the refund cannot be granted before the completion of scrutiny assessment proceedings for AY 2018-19 under Section 143(3) of the Act.

Yours faithfully,
Sd/-
(Priyanka Durbey)
Deputy Commissioner of Income Tax
Circle 9(1), New Delhi

6. We are informed at the Bar that, the communication of the order dated 03.03.2020 passed by the Deputy Commissioner of Income Tax, Circle-9(1) has culminated into the order dated 09.03.2020, rendered by the Principal Commissioner of Income Tax-3, New Delhi. The same is reproduced hereunder:-

**“OFFICE OF THE
PRINCIPAL COMMISSIONER OF INCOME TAX-3
ROOM NO.394A, C.R. BUILDING, I.P. ESTATE, NEW
DELHI**

F.No.Pr.CIT-3/Refund/2019-20/2726 Dated : 09.03.2020

To

The Dy. Commissioner of Income Tax
Circle-9(1)
New Delhi

Sir/Madam,

Sub: Approval for withholding of refund u/s 241A determined under 143(1) in respect of A.Y.2018-19 in cases where notice u/s 143(2) issued – reg.

Kindly refer to your office letter dated 03.03.2020 on the above subject.

2. In this regard, I am directed to convey the approval of Ld. Pr. Commissioner of Income Tax-3, New Delhi for withholding of refund u/s 241A determined under 143(1) in the following case where notice u/s 143(2) issued:-

S.No.	Name of Case	A.Y.
1.	M/s FIS Payment Solutions & Services India Pvt. Ltd.	2018-19

3. I have been further directed to convey that the approval for withholding of refund has been granted after examining your proposal, looking to the issues identified for scrutiny and additions made in preceding assessment year and consequential

huge tax demand which is likely to be created on completion of scrutiny assessment u/s 143(3).

Yours faithfully,
Sd/-
(M.L. Gupta)
Income Tax Officer (Hqrs.)
O/o Pr.CIT-3, New Delhi

Copy to: The Addl. CIT, Range-9, New Delhi for information.

Income Tax Officer (Hqrs.)
O/o.Pr.CIT-3, New Delhi”

7. Mr. Deepak Chopra, learned counsel appearing on behalf of the petitioner states that, in view of the subsequent developments and in particular the order dated 09.03.2020, rendered by the Principal Commissioner of Income Tax-3, New Delhi, they have instituted a separate petition being W.P.(C) 3273/2020 titled as “*M/S FIS Payment Solutions & Services India Private Limited vs. Deputy Commissioner of Income Tax-9(1) and Anr.*” Assailing the said order dated 09.03.2020. The said writ petition prays as follow:-

- (a) Issue a writ of mandamus or any other appropriate writ quashing proceedings undertaken by the First Respondent vide letter dated 03.03.2020 seeking to withhold the refunds for Assessment Year 2018-19 and the approval granted by the Second Respondent on 09.03.2020 to invoke section 241A

of the Act on the request made by the First respondent on 03.03.2020;

- (b) Issue a writ of mandamus, or any other appropriate writ directing the Respondent/s to release the refund of INR 74,88,99,152/- along with applicable interest under section 244A of the Act, till the date of issuance of refund, for Assessment Year 2018-19;
- (c) Pass such other orders which this Hon'ble Court may deem fit and proper on the facts and in the circumstances of the case.

8. It is an admitted position that both these petitions relate to the refund pertaining to the assessment year 2018-19. We have already issued notice in the said writ petition being W.P.(C) 3273/2020 for 17.07.2020.

9. Mr. Chopra, learned counsel appearing on behalf of the petitioner, therefore, seeks leave to withdraw the present petition with liberty to prosecute W.P.(C) 3273/2020, which also pertains to the assessment year 2018-19 and is the subject matter of the present writ petition, as well.

10. Leave and liberty granted.

11. The present petition is disposed of as having become infructuous. The pending application also stands disposed of.

12. The date already fixed i.e. 17.07.2020 stands cancelled.

13. A copy of this judgment be uploaded on the website of this Court.

**SIDDHARTH MRIDUL
JUDGE**

**TALWANT SINGH
JUDGE**

JUNE 04, 2020
dn/as

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