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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 14295/2021

AMADEUS IT GROUP SA (EARLIER AMADEUS
GLOBAL TRAVEL DISTRIBUTION SA) Petitioner

Through: Mr. Ajay Vohra, Senior Advocate with
Mr. Neeraj Jain and Mr. Aniket D.
Agrawal, Advocates.

versus

ASSISTANT COMMISSIONER
OF INCOME TAX & ORS. Respondents
Through: Mr. Sunil Agrawal, Advocate.

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Date of Decision: 15th December, 2021

CORAM:

**HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVING CHAWLA**

JUDGMENT

MANMOHAN, J (Oral):

CM Appl. 45086/2021 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, present application stands disposed of.

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1. Present writ petition has been filed seeking directions to the respondents to grant refund of taxes paid/ deposited by the petitioner for the assessment years 1996-97 to 2016-17 along with applicable interest.

2. Learned senior counsel for the petitioner states that petitioner is a foreign company (being a non-resident incorporated under the laws of Spain) and part of Amadeus Group of Companies, the petitioner was merged with Amadeus IT Holding SA with effect from 01st August 2016.

3. He states that the petitioner filed its return of income for the assessment year 1996-97 on 26th February 1999 declaring NIL income. He further states that the assessing officer vide order dated 23rd March 1999 under section 143(3) of the Act assessed the total income of the petitioner at Rs.13,00,83,258/-.

4. He further states that the petitioner preferred an appeal before the First Appellate Authority, viz., the Commissioner of Income Tax Appeals against the order dated 23rd March, 1999. The Appellate Authority vide order dated 23rd March, 2000 upheld the findings of the assessing officer regarding permanent establishment and attribution of income to a PE.

5. Learned senior counsel for the petitioner states that the petitioner, being aggrieved by the substantive findings of the CIT(A) upholding the assessment order, filed statutory appeal under Section 253 of the Income Tax Act, 1961 (hereinafter referred to as 'Act') before the Income Tax Appellate Tribunal, New Delhi. The Appellate Tribunal vide common order dated 30th November 2007 partly allowed the appeals of the petitioner as a result of which, the NIL income returned by the petitioner stood accepted.

6. He further states that this Court vide separate orders dated 24th January, 2011 dismissed both the appeals preferred by the petitioner and the revenue, thereby upholding the findings/ conclusions arrived at by the Tribunal as a result of which the Nil income returned by the Petitioner stood affirmed which in turn makes the petitioner entitled to refund of the entire

taxes deposited/ paid, along with applicable interest.

7. He further states that the petitioner as well as the Revenue are currently in appeal against the said order(s) of this Court before the Supreme Court. He, however, states that the Supreme Court has not granted any stay on the operation of the order(s) of this Court. He submits that refund due to the petitioner cannot be withheld merely on the ground that issue is pending final adjudication before the Supreme Court.

8. Issue notice.

9. Mr. Sunil Agrawal, learned counsel for accepts notice on behalf of the respondents. He states that by way of the present writ petition, the petitioner seeks refund of, as many as, twenty assessment years in one go. He further states that no cause of action has arisen in the recent past and therefore, the present writ petition is not maintainable.

10. Having heard learned counsel for the parties, this Court finds that the petitioner prior to the filing of the present writ petition had made a request to respondent no.1 vide application dated 5th August, 2021 requesting thereby to respondent no.1 to grant refund of income tax due for the assessment years 1996-97 to 2016-17. However, the said application has not been decided till date despite various reminders. Consequently, this Court is of the view that the petitioner has the cause of action to maintain the present writ petition.

11. This Court is also of the view that Section 240 of the Act embodies the salutary principle of right of the assessee to receive refund of tax which becomes due to the assessee as a result of any order passed in appeal.

12. Accordingly, the present writ petition is disposed of with the directions that respondent No.1 shall process the case of the petitioner for

refund of taxes paid/deposited by the petitioner for the assessment years 1996-97 to 2016-17 and refund the same along with applicable interest in accordance with law within three months.

13. It is clarified that the process of refund is subject to the order to be passed by the Apex Court in the appeals already pending before it. This Court also clarifies that it has not expressed any opinion on the quantum of refund.

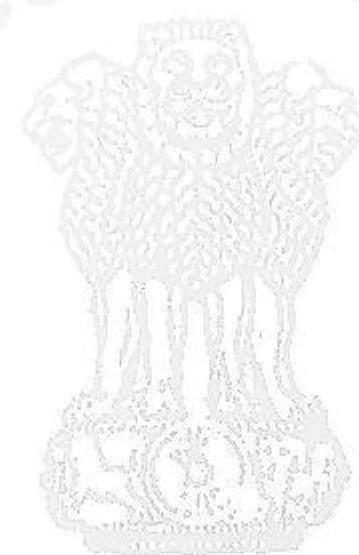
14. With the aforesaid directions, present writ petition stands disposed of.

MANMOHAN, J

NAVIN CHAWLA, J

DECEMBER 15, 2021

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