

TAX FLASH NEWS

4 April 2023

Issuance of assessment notice is not a sufficient ground to withhold a tax refund. AO needs to record suitable reasons to show adverse impact on the revenue

Recently, the Delhi High Court in the case of Oyo Hotels and Homes Private Limited¹ held that a refund cannot be withheld merely because taxpayer's case is selected for scrutiny assessment or where an assessment notice has been issued. The Assessing Officer (AO) is required to give detailed and compelling reasons as how the release of the refund will adversely affect the interest of the Revenue. In the present case, the AO had not recorded suitable reasons in writing to withhold the refund. The tax department has been directed to conduct a fresh exercise bearing in mind the provisions of Section 241A of the Income-tax Act, 1961 (the Act).

Facts of the case

- The taxpayer filed a return of income for AY 2020-21 declaring a loss and claimed a refund on account of tax deducted at source. Pursuant to a demerger and to give effect to the Scheme of Arrangement, the taxpayer filed a revised return of income.
- In a scrutiny assessment under Section 143(2), the taxpayer provided all the necessary clarifications. Subsequently, a notice under Section 142(1) was sent and the taxpayer submitted detailed information and documents. The taxpayer also received an intimation under Section 143(1) determining a refund and it stated that the refund will be credited within a period of 15 days.

- Despite the lapse of several months after passing of the intimation, no refund was received by the taxpayer. The taxpayer filed online complaints on the income tax portal seeking disbursal of the refund amount. The taxpayer also sent detailed letters to the tax department.
- The tax department by an email informed the taxpayer that its refund has been withheld in view of a letter received from the Faceless Assessment Unit. However, the letter did not contain any enclosures or reasons for the withholding of the refund.

High Court decision

- A refund cannot simply be withheld if the taxpayer is selected for scrutiny assessment or where a notice has been issued under Section 143(2). The Delhi High Court in the case of Ingenico International² held that the refund can only be stalled if the conditions stipulated in Section 241A are fulfilled, i.e., the AO records his reasons in writing as to why the release of refund is likely to affect the interests of the revenue and the AO has obtained a prior approval of his superior officer.
- The Delhi Court in Maple Logistics³ held that the discretion vested with the AO to withhold a refund must be exercised judiciously and with due application of mind. The reasons are to be recorded in writing after an objective assessment of all relevant circumstances. It is only where after evaluation of the material, if the AO feels that the case would fall in the realm of 'adversely affecting the Revenue', a refund can be withheld.

¹ Oyo Hotels and Homes Private Limited v. DACIT [W.P.(C) 16698/2022] (Del)

² Ingenico International India Pvt. Ltd. v. DCIT [W.P.(C) 10764/2020] (Del)

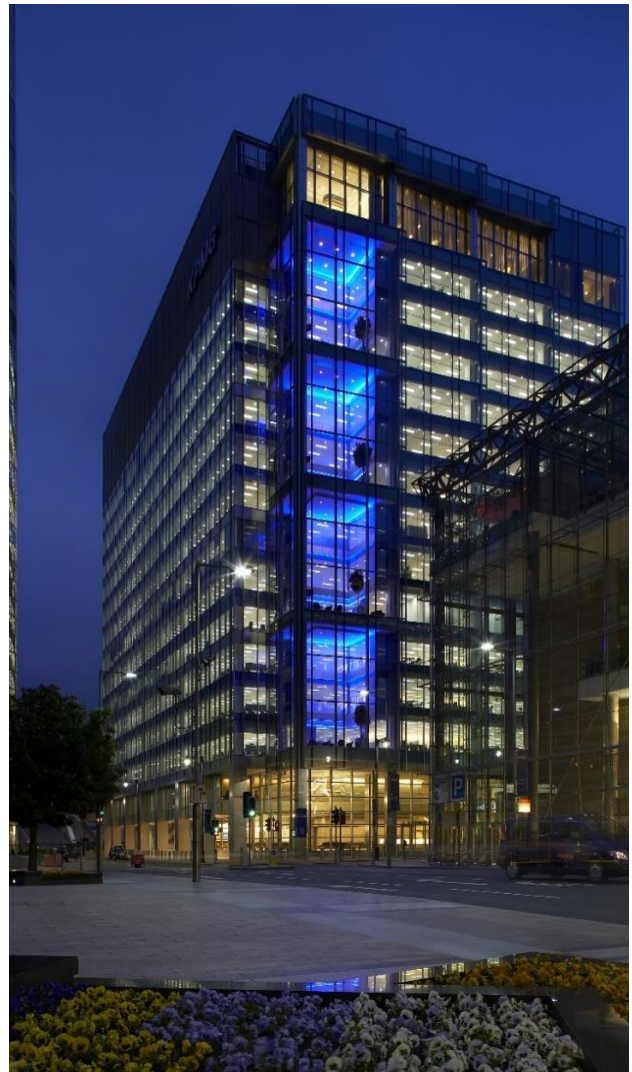
³ Maple Logistics (P.) Ltd. v. PCCIT [2019] 112 taxmann.com 199 (Del)

- In *Ericsson India Private Limited*⁴, the Delhi High Court observed that the refund of amount claimed 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.
- Provisions of Section 241A were not correctly examined by the AO in the present case. There were no worthwhile reasons recorded in writing. The reasons for withholding the refund were simply that the case was selected under CASS with a large number of 'issues' to be examined. However, no details of any issue which requires examination was provided. There was a passing mention of the fact that 'it is also referred to transfer pricing', however, what was referred, was absent.
- While withholding a refund, the AO is required to look into various factors in relation to a taxpayer, such as, the amount of tax liability which a scrutiny assessment may eventually lead to vis-a-vis the amount of tax refund due, the financial standing or credit worthiness of the taxpayer, and whether there would be any doubts of recovering amounts from the taxpayer. The AO is also required to give detailed and compelling reasons as to how the release of the refund will adversely affect the interest of the Revenue.
- The taxpayer is a well reputed company with a large net-worth running into several billion dollars and not a 'fly-by-night' operator. It is a taxpayer for the last several years and the credit worthiness of the taxpayer was also not in dispute.
- Merely because a notice was issued under Section 143(2), it was not a sufficient ground to withhold the refund under the provisions of the Act. It would be wholly unjust and inequitable for the AO to withhold a refund by citing the reason that a scrutiny notice was issued, and such an interpretation of the provision would be contrary to the intent of the legislature.
- The Principal Commissioner of Income Tax (Faceless Assessment Unit) had also mechanically accorded permission to withhold the refund till the date of finalisation of assessment without any application of mind in the matter.

- The tax department shall conduct a *de novo* exercise bearing in mind the provisions of Section 241A and above principles, within six weeks of receipt of a copy of this decision.

Our comments

In several cases it has been seen that the tax department stalls the refunds of the taxpayers without giving cogent reasons in writing. The principles laid down in this decision will help taxpayers to argue against such arbitrary withholding of legitimate tax refund. To withhold refund, the AO has to adhere to certain conditions and factors for example suitable reasons in writing to show adverse impact on the interest of the revenue, prior approval of the superior authority, the financial standing or credit worthiness of the taxpayer, whether recovery of tax amounts from the taxpayer is doubtful, etc.



⁴ *Ericsson India (P.) Ltd. v. ACIT* [2020] 117 taxmann.com 381 (Del)

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