

Withholding of Refunds u/s.241A - An Insight

Date: June 10,2020



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Introduction

Refund of tax is the amount of tax which have been submitted or deducted over and above the actual Income Tax Liability of an individual for any financial year. As per Section 237, if any person satisfies the Assessing Officer (A.O.) that the amount of tax paid by him or on his behalf or treated as paid by him on his behalf for any assessment year exceeds the amount with which he is properly chargeable under this Act for that year, he shall be entitled to a refund of that excess. However the assessing officers are also endowed with the power of withholding the refund by the Income Tax act in certain assessments where they are of the opinion that releasing of refund can adversely affects the interest of the revenue.

Background of Provisions regarding “Withholding of Refunds”

1. Amendment of Section 143(1D)

Section 143(1D) was introduced on 1-7-2012, which provide that the processing of a return shall not be necessary, where a notice has been issued to the assessee under Section 143(2). However it has proved to be a bottle-neck in the commitment of the Department to issue timely tax refunds. It has been observed that in various cases provisions under section 143(1D) is creating undue hardship to the tax payers as the entire refund is held up till the completion of the scrutiny which gets normally completed after 3 years from the end of the Financial Year. In other words, the working capital fund is blocked in refunds for a longer period especially in cases of large refunds, causing financial crises. It is unfair to the assessee that the refund due to him under his tax return and payable within six months is withheld on the pretext that no processing of the tax return has taken place. Thus, in order to resolve the grievance of delay in issuance of refund in genuine cases which are routinely selected for scrutiny assessment, the provisions of section 143(1D) are amended and thus cease to apply in respect of returns furnished for assessment year 2017-18 and onwards. Hence from Assessment Year 2017-18, discretion of Assessing Officer in processing returns under scrutiny has been completely removed and therefore, all returns have to be processed before any assessment by assessing officers.

2) Insertion of New Section 241A

In the Budget of financial year 2017-18 :To address the concern of recovery of revenue in doubtful cases, it is proposed to insert a new section 241A which provides as under:

“For the Income Tax 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) and the Assessing authority 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”.

Objects of CBDT behind amendment under section 143(1D) and introduction of Section 241A

There are two objects behind the amendment under section 143(1D) and introduction of section 241A;

1) To avoid the difficulties of delay in issuance of refund in genuine cases which are routinely selected for scrutiny assessment. Sub-section (1D) of Section 143 was, therefore, made inapplicable to the returns furnished for the assessment year 2017-18 and onwards.

2) To safeguard the interest of the revenue where refund of any amount is due to the assessee under Section 143(1) of the Act, and the Assessing Officer forms an opinion that grant of refund may adversely affect the recovery of revenue, he may, subject to fulfilling the conditions contained in the said provision, withhold the refund till the date of scrutiny assessment.

The objects behind the above amendments can be well explained by CBDT circular no 2/ 2018 “EXPLANATORY NOTES TO THE PROVISIONS OF THE FINANCE ACT, 2017”

Processing of Income Tax return within the prescribed time and enable withholding of refund in certain cases

59.1 Before amendment by the Finance Act, 2016, the provisions of sub-section (1D) of section 143 of the Income-tax Act specify that the processing of a return shall not be necessarily required, where a notice has been issued to the assessee under sub-section (2) of the said section.

59.2 The said sub-section was amended vide Finance Act, 2016 and it was provided that with effect from assessment year 2017-18, processing under section 143(1) of the Income-tax Act is to be done before passing of assessment order.

59.3 In order to address the grievance of delay in issuance of refund in genuine cases, a proviso has been inserted in section 143(1D) of the Income-tax Act specifying that the provisions of the said sub-section shall cease to apply in respect of returns furnished for assessment year 2017-18 and onwards.

59.4 However, to address the 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 authority 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.

Power Granted under Section 241A is not Unguided or Unlimited

Oftenly it has been observed that assessing officer withholds refunds in various cases on irrational grounds or on no relevant grounds in the eyes of law. The legislative intent regarding withholding of refunds is clear and explicit. 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. 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. The AO is duty bound to process the refund where the same are determined. The discretion vested with the AO has to be exercised judiciously. Merely because a scrutiny notice has been issued, it should not weigh the AO with the power to withhold the refund. The AO has to apply his mind 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”

The AO is required to 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.

It is well settled by various Judgements of various courts that the exercise of powers under Section 241A are subject to the Assessing Officer forming a bonafide opinion, that grant of refund may adversely affect recovery of revenue. Further, he has to record his reasons in writing and can withhold the refund only with previous approval of the Principal Commissioner or Commissioner as the case may be. When Section 241A confers the Assessing Officer with wide discretionary powers and at the same time, puts conditions for exercise of such powers, such exercise under no circumstances can be taken over by computerized system. The very essence of passing of the order under Section 241A is application of mind by the Assessing Officer to the issues which are germane for withholding the refund on the basis of statutory prescription contained in the said Section. We must, therefore, deprecate the practice of the department in sending such auto-generated response to the assessee for withholding the returns.

Important Judgements

In the case of ***Huawei Telecommunications (India) Company Private Limited V. Union Of India*** [TS-181-HC-2020(P & H)] And Other 2020, the Punjab and Haryana High Court held that “ It is evident that procedure for refund and withholding of refund is often being used as delaying tactics for various reasons

including window dressing of collection of revenue. The method adopted is a short sighted vision. Apart from harassment to the assessee, it results in paying interest on the delayed amount of refund putting further burden on the exchequer. It cannot be lost sight of that trade and commerce is a life blood of the system, if the excess amount deposited as tax is not refunded to the entrepreneur/assessee, it has effect on the liquidity and business. There cannot be second opinion that the revenue collection and securing the interest of the revenue is of great importance, at the same time the revenue is to be collected like an apiarist extracts honey from beehive without destroying it. Considering the facts that in spite of there being no justifiable reason as per provisions of the statute, yet the refund was withheld for which the petitioner would be entitled to statutory interest.

The decision of Bombay High Court in Writ Petition No. 2145 of 2019-**Vodafone Idea Limited v. Deputy Commissioner of income tax**, is as follows “where requirements of Section 241A are not fulfilled, the exercise of power is bad in law. “Considering these aspects of the matter, we do not find that the exercise of powers by the Assessing Officer fulfils requirement of Section 241A of the Act. We have, no doubt, about the existence of the powers. We find that the exercise of the powers would not be justified in the facts of the case. In the result, the orders impugned in both the petitions are set aside. Resultantly, the respondents shall release refund of the petitioner arising out of the return filed for the assessment year 2017-18 and the process thereof under Section 143(1) of the Act by the Assessing Officer. This shall be done along with statutory interest within a period of three weeks from the date of receipt of copy of this order.”

The Delhi High Court in the case of **Maple Logistics Private Limited & Anr. Versus Principal Chief Commissioner of Income Tax** [\[TS-688-HC-2019\(DEL\)\]](#) held as under:

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 doubt of recovery of revenue in doubtful cases. 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.

CBDT Guidelines for early Processing of Returns and Refunds

CBDT has itself issued Instruction NO. 7/2012 dated 1st August, 2002 wherein they have specifically directed the officers of the Revenue to process all returns in which refunds are payable expeditiously.

Similarly, as late as in 2014 in the Citizen's Charter issued by the Income Tax Department in its vision statement states that the Department aspires to issue refunds along with interest under Section 143(1) of the Act within 6 months from date of electronically, filing the return.

In order to ensure early processing of returns, CBDT also launched software for processing of returns on Income-tax Business Application (ITBA) which has been functioning since 31st October, 2017. The returns pushed to the Assessing Officer for processing by the CPC are required to be processed electronically on the ITBA. However, in exceptional circumstances, whenever returns cannot be processed because of technical difficulties in functioning of ITBA, in order to provide an uninterrupted taxpayer service, the Assessing Officer can also manually process the return that is pushed to them by the CPC with prior administrative approval of Pr. CIT. However, before taking up the return for processing manually, the difficulty being faced in processing the return electronically on ITBA on a case to case basis would be referred to the Pr. DGIT (System,) who shall satisfy himself that due to technical difficulties the return cannot be processed electronically on ITBA within a reasonable period & thereafter, permit manual processing in that case. However, in all such cases, the Assessing Officers have to mandatorily upload the same in the system.

Conclusion

In many cases it has been observed that the reasons that are relied upon by the Revenue to justify the withholding of the refund, lacked in reasoning and substance which cause immense hardships to the tax payers and if the refund amount is big than it can lead to liquidity crunch in the business which may lead to borrowing of working capital at a higher rate of 12% to 18% which cause an additional burden on the tax payer and sometimes even lead to breakdown of his business. It is desirable that any refund due to an

assessee, under the Income tax return filed by him must be issued to him within a stipulated time frame of maximum six months from the end of the month in which the tax return is filed unless exceptional circumstances and recording of valid and substantial reasons for withholding the same. Also if assessing officers are reluctantly holding the refunds of the parties without proper approvals and recording of the reasons as required under the act, they should be made personally liable to compensate the assessee for the financial loss incurred to him due to late releasing of refund by Income tax department.