IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO. 2145 OF 2019

Vodafone Idea Limited]
(Successor in interest of M/s. Idea Cellular Ltd),]
10th Floor, Birla Centurion, Centurion Mills Compound,]
Pandurang Budkkar Marg, Worli, Mumbai – 400 030.] .. Petitioner

Versus

1. **Deputy Commissioner of Income-tax, CPC,**]
Bangalore, Post Bag 2, Electronic City Post Office,]
Bangalore – 560 500]

1A. **Jt. Commissioner of Income-tax (OSD)-5(2)(2),**]
Room No. 525, 5th Floor, Aaykar Bhawan, M.K. Road,]
Mumbai – 400 020.]

2. **Deputy Commissioner of Income-tax**]
Circle-(5)(2)(2), Mumbai,]
Room No. 525, 5th Floor, Aaykar Bhawan, M.K. Road,]
Mumbai – 400 020.]

3. **The Additional Commissioner of Income-tax-5(2),**]
Mumbai.]
Room No. 518, 5th Floor, Aaykar Bhawan, M.K. Road,]
Mumbai – 400 020.]

4. **The Principal Commission of Income-tax-5, Mumbai**]
Room No. 501, 5th Floor, Aaykar Bhawan, M.K. Road,]
Mumbai – 400 020.]

5. **Chief Commissioner of Income-tax-2, Mumbai**]
Room No. 422, 4th Floor, Aaykar Bhawan, M.K. Road,]
Mumbai – 400 020.]

6. **Chairman, Central Board of Direct Taxes,**]
Department of Revenue, Ministry of Finance,]
Government of India, Central Secretariat,]
North Block, New Delhi 110 001.]

7. **Union of India**]
through the Secretary, Department of Revenue,]
Ministry of Finance, North Block,]

New Delhi – 100 001.] .. Respondents

WITH
WRIT PETITION NO. 2172 OF 2019

Vodafone Idea Limited]
(Erstwhile, Vodafone India Ltd.)]
10th Floor, Birla Centurion, Centurion Mills Compound,]
Pandurang Budkkar Marg, Worli, Mumbai – 400 030.] .. Petitioner

Versus

1. **Deputy Commissioner of Income-tax, CPC,**]
Bangalore, Post Bag 2, Electronic City Post Office,]
Bangalore – 560 500]

1A. **Jt. Commissioner of Income-tax (OSD)-5(2)(2),**]
Room No. 525, 5th Floor, Aaykar Bhawan, M.K. Road,]
Mumbai – 400 020.]

2. **Assistant Commissioner of Income-tax**]
Circle-(5)(2)(2), Mumbai,]
Room No. 571, 5th Floor, Aaykar Bhawan, M.K. Road,]
Mumbai – 400 020.]

3. **The Additional Commissioner of Income-tax-5(2),**]
Mumbai.]
Room No. 518, 5th Floor, Aaykar Bhawan, M.K. Road,]
Mumbai – 400 020.]

4. **The Principal Commission of Income-tax-5, Mumbai**]
Room No. 501, 5th Floor, Aaykar Bhawan, M.K. Road,]
Mumbai – 400 020.]

5. **Chief Commissioner of Income-tax-2, Mumbai**]
Room No. 422, 4th Floor, Aaykar Bhawan, M.K. Road,]
Mumbai – 400 020.]

6. **Chairman, Central Board of Direct Taxes,**]
Department of Revenue, Ministry of Finance,]
Government of India, Central Secretariat,]
North Block, New Delhi 110 001.]

7. **Union of India**]
through the Secretary, Department of Revenue,]
Ministry of Finance, North Block,]
New Delhi – 100 001.] .. Respondents

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- Mr. J.D. Mistri, Sr. Advocate a/w Mr. Nitesh Joshi i/by Mr. Atul Jasani for the Petitioner
- Mr. Nirmal Mohanty for Respondent Nos. 2 to 4

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CORAM : AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATE : OCTOBER 11 & 14, 2019.

ORAL JUDGMENT (Per Akil Kureshi, J.)

1. These petitions arise in similar background. They have been heard together and would be disposed of by this common judgment. Primary facts may be noted from Writ Petition No. 2145 of 2019. To the extent the facts are different, shall be noted from the companion petition.

2. Petitioner is a public limited company and is engaged in the business of providing telecommunication services. For the assessment year 2017-18, the petitioner had filed return of income on 31.10.2017 which was subsequently revised on 28.3.2019. As per the return, the petitioner had declared loss to the tune of Rs. 6600.47 crores (rounded off). Resultantly, the petitioner had claimed refund of the entire amount of tax paid at source which came to Rs. 565.28 crores (rounded off) and tax collected at source of Rs. 22,31,792/-. The return of the petitioner thus gave rise to

refund of Rs. 565.51 crores (rounded off).

3. The return of income was processed by respondent No. 1 - Assessing Officer under Section 143(1) of the Income Tax Act, 1961 ("**the Act**" for short) on 24.3.2019. After certain adjustments, this process of return gave rise to refund of Rs. 562.68 crores (rounded off) with statutory interest, the total refund worked out to Rs. 630.21 crores (rounded off). To complete the facts, we may record that the petitioner's revised return was processed by the Assessing Officer on 14.9.2019. Along with interest, this gave rise to refund of sum of Rs. 634.14 crores (rounded off). This would of course subsume the refund arising out of the original return.

4. The respondents, have, however, not released the refund. Firstly an intimation came to be generated on 24.3.2019 from the computer system by the Income Tax Department. This intimation contained a following recitation :-

> "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 and subject to adjustment of arrear demand, if any, u/s 245. Please contact the Assessing Officer for more detail."

5. On 21.8.2019, the Assistant Commissioner of Income Tax communicated to the petitioner an order passed by the Joint Commissioner of Income Tax under newly inserted Section 241A of the Act which is challenged in this petition. This order reads thus:-

"Idea Cellular Ltd now known as Vodafone Idea Ltd AY 2017-18

29th March 2019.

Processing the return of income for AY 2017-18 resulted in refund of Rs. 630.20 Cr.

2. It is seen that the assessee declared income of Rs. 286.89 Cr. In 2016-17 whereas it declared as huge loss in AY 2017-18.

3. It is seen that the assessment proceedings are pending involving various issues including transfer pricing. Further the issue of huge loss in AY 2017-18 whereas there was substantial income in immediate preceding assessment year i.e AY 2016-17 needs through investigation.

4. There had been number of additions every year wherein appeals are pending with ITAT. Some of the issues are as under:-

A. Revenue Share License Fees

B. Discount to prepaid distributors – Non deduction of TDS -40(a)(ia)

C. International Roaming charges – Non deduction of TDS – 40(a)(i)

D. Lease rent paid to Quippo

E. ESOP

F. Amortisation u/s. 35ABB in respect of Fixed License fees of erstwhile Spice Communications Ltd. amalgamated with the company.

5. If the refunds are issued to the assessee, there would be huge demand. Therefore to protect the interest of revenue, I propose to withhold the above mentioned refund u/s 241A of the I.T. Act 1961 till 31.12.2020 or completion of assessment whichever is earlier.

6. Submitted for approval.

Jt. CIT(OSD) holding charge of
Dy CIT 5(2)(2), Mumbai."

6. In Writ Petition No. 2172 of 2019, basic issues involved are identical. Only difference is in dates of filing and processing of the returns as well as the claim of the refund arising out of the process of return under Section 143(1) of the Act. In this case, the petitioner's claim for refund with interest comes to Rs. 154.25 crores (rounded off). In this case also, the Joint Commissioner of Income Tax has, for similar reasons, rejected the refund claim in exercise of powers under Section 241A of the Act.

7. In view of the such facts, appearing for the petitioner, learned counsel Mr. Mistri raised the following contentions:-

(1) That auto generated response by the Central Processing Centre of the Income Tax Department cannot be

considered an order envisaged under Section 241A of the Act.

(2) For over six months, the Assessing Officer did not take any steps for releasing the refund of the petitioner.

(3) Even otherwise on merits, the Assessing Officer has committed error in withholding the refund because:

(i) Even if the additions were to be made in the hands of the assessee upon completion of the assessment, the assessee would have the right of appeal. Pending such appeal, as per the circular issued by CBDT, ordinarily recovery would be stayed upon depositing 25% of the disputed tax amount. In the present case, indirectly the Department would retain the entire tax even before the assessment is completed;

(ii) The assessee has suffered huge losses during the year under consideration. Even if all additions which the Assessing Officer has indicated in his impugned order, which according to him require further scrutiny were to be made, the petitioner would still have a loss return. In other words, even if all grounds raised by the Assessing Officer in the impugned order are accepted, there would still be

no tax liability in the hands of the assessee in the current assessment year;

(iii) Learned counsel drew our attention to an order dated 30.3.2017 under Section 197 of the Act. This order was passed pursuant to an application dated 17.5.2016 filed by the assessee requesting the Assessing Officer to issue a certificate for non deduction of tax at source in terms of Section 197 of the Act. Learned counsel pointed out that for virtually entire assessment year, no order was passed on such application. Instead, only two days before the end of the financial year, the order came to be passed. As per this order, the authority permitted payees of the assessee not to deduct any tax at source. In other words, he was also prima facie of the opinion that considering the assessee's finances, the assessee during the present assessment year, is unlikely to have any tax demand. He submitted that had this order been passed expeditiously, the entire question of payees deducting tax at source of which the assessee would claim refund, could to have been avoided;

(iv) He submitted that even otherwise requirements of

Section 241A of the Act have not been followed in the present case.

8. On the other hand, learned counsel Mr. Mohanty opposed the petition submitting that Section 241A of the Act gives discretionary powers to the Assessing Officer not to release the refund arising out of the process of return under Section 143(1) of the Act under certain circumstances. The Assessing Officer has prima facie examined the return of income filed by the petitioner and come to the conclusion that there is every possibility of substantial additions being made in such return. In order to protect the interest of the revenue, therefore,he has exercised the power under Section 241A of the Act. The Court should, therefore, not interfere with such discretionary exercise of powers. Learned counsel submitted that in relation to the issues mentioned by the Assessing Officer in the impugned order, the Assessing Officer in case of this very assessee in earlier assessment years, has made sizable additions, some of them pertain to international transactions. In the present case also, similar issues are likely to arise. The Assessing Officer is, therefore, justified in holding a belief that in order to protect the

interest of the revenue, till scrutiny assessment is completed, refund arising out of the process of return under Section 143(1) of the Act should not be released. He also opposed the suggestion of the petitioner that even after accepting all contentions of the Assessing Officer, loss declared by the assessee will still not be converted into one of profit. In support of his contention, learned counsel relied on a decision of the Division Bench of the Delhi High Court in the case of **M/s. Vodafone Mobile Services Limited Vs. Asst. Commissioner of Income Tax & Anr.**[1] in which in the context of the provisions contained in Section 143(1D) of the Act, the Court had made following observations:-

> "39. A reading of the above judgements and the relevant provisions, clearly shows that Section 143(2) empowers, the AO to issue notice to the assessee to produce documents or other evidence, to prove the genuineness of the income tax return. Under section 143(1D) of the Act as introduced by the Finance Act, 2012 processing of a return under Section 143(1)(a) is not necessary where a notice has been issued under Section 143(2) of the Act. This provision has now been amended by the Finance Act, 2016 (with effect from the AY 2017-18) to provide that if scrutiny notice is issued under Section 143(2), processing of return shall not be necessary before the expiry of one year from the end of the financial year in which return is submitted.

1 Order dated 14.12.2018 in W.P.(C) 2730/18 & CM Nos. 46054-55/2018

48. There is some merit in the revenue's argument that substantial outstanding demand are pending against the petitioner. Further, the likelihood of substantial demands upon the assessee after the scrutiny for the AYs is completed, cannot be ruled out. The Revenue should have the right to adjust the demands against the refunds that may arise but have not yet been determined due to ongoing scrutiny proceedings.

49. As far as the argument that the expiry of the one year period, *per second* proviso to Section 143(1) resulting in finality of the *intimation of acceptance*, this court is of opinion that the deeming provision in question, i.e. Section 143(1)(d) only talks of two eventualities: "*shall be deemed to be the intimation in a case where no sum is payable by, or refundable to, the assessee under clause (c), and where no adjustment has been made under clause (a).*" Secondly, that intimation or acknowledgment cannot confer any greater right than for the assessee to ask the AO to process the refund and make over the money; it is up to the AO- wherever the possibility of issuing a notice under Section 143(2) exists, or where such notice has been issued, to *apply his mind, and decide whether given the nature of the returns and the potential or likely liability, the refund can be given.* It does not mean that when an assessment - pursuant to notice under Section 143(2) is pending, such right to claim refund can accrue. This court also recollects the decision of the Supreme Court in Deputy Commissioner of Income Tax v Zuari Estate Development & Investment Co Ltd 2015 (15) SCC 248 which held that an intimation under Section 143(1) is not to be considered as an assessment."

9. Having thus heard learned counsel for the parties and having perused the documents on record, before

processing the facts, we may refer to Section 241A of the Act. This Section pertains to withholding of refund in certain cases and was inserted by the Finance Act 2017 w.e.f. 1.4.2017. The section reads as under:-

> "**241A.** 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."

10. Section 143(1D) of the Act was also simultaneously substituted. Prior to its substitution, this sub-section which was inserted by the Finance Act, 2012 w.e.f 1.7.2012 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)."

11. By virtue of Finance Act, 2017 w.e.f 1.4.2017, the

substituted sub-section (1D) of Section 143 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 assessee under sub-section (2):

12. Section 241A of the Act, thus provides that for every assessment year commencing on or after 1.4.2017, where refund of any amount becomes due to the assessee under Section 143(1) of the Act and the Assessing Officer is of the opinion, having regard to the fact that the 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 the Commissioner, as the case may be, withhold the refund upto the date on which the assessment is made. Clauses 57 and 76 of the notes clauses explaining the relevant provisions of the Finance Act, in the context of substitution of sub-section (1D) of Section 143 and insertion of Section 241A of the Act provided as under:-

> **"Processing of return within the prescribed time and enable withholding of refund in certain cases**
>
> The provisions of sub-section (1D) of section 143 provide that

the processing of a return shall not be necessary, where a notice has been issued to the assessee under sub-section (2) of the said section. Amendment to the said sub-section brought by Finance Act, 2016 provides that with effect from assessment year 2017-18, processing under section 143(1) is to be done before passing of assessment order.

In order to address the grievance of delay in issuance of refund in genuine cases which are routinely selected for scrutiny assessment, it is proposed that provisions of section 143(1D) shall ceases to apply in respect of returns furnished for assessment year 2017-18 and onwards.

However, to address the concern of recovery of revenue in doubtful cases, it is provided to insert a new section 241A to provide that, for the returns furnished for assessment year commencing on or after 1st Apri, 2017, where refund of any amount becomes due to the assessee under section 143(1) 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 upto the date on which the assessment is made.

These amendments will take effect from 1st April, 2017 and will, accordingly, apply to returns furnished for assessment year 2017-18 and subsequent years."

13. As noted, previously sub-section (1D) of Section 143 permitted non-processing of return under Section 143(1) of the Act before expiry of the period specified in second provision to sub-section (1) where a notice has been issued to the assessee under sub-section (2) of Section 143. A Division Bench of this Court, in case of **M/s. Group M.**

Media India Pvt Ltd Vs. The Union of India & Ors.[2] , had occasion to examine the said provision in the light of the action of Assessing Officer in withholding the refund of the assessee arising out of return of income. In this background, it is observed as under:-

> "9. The only contention on behalf of the Revenue to oppose the petition is that as the Assessing Officer has time available to process the refund till 31st March, 2017, no mandamus can be issued till 31st March, 2015. We repeatedly asked of Mr. Mohanty, the learned Counsel for the Revenue, if there was any reason why the return could not be processed before 31st March, 2017. No reasons are forthcoming from the Revenue as to why the Assessing Officer will not able to dispose of the application for refund or process the return under Section 143(1) of the Act before 31st March, 2017. This conduct / stand of the Assessing Officer, to say the least, is most disturbing in the context of the fact that the petitioners have been seeking refund since April, 2016. First, he does not deem it proper to inform the petitioner in writing why he cannot deal with the application and after the petitioner moves the Court, the stand taken is that no direction can be given to him till 31st March, 2017 which is the last date to process the return under Section 143(1) of the Act. This attitude on the part of the Assessing Officer is preposterous.
>
> 10. The action of the officer on the ground urged seems to be in complete variance with the higher echelons of administration of the tax administration being an assessee

2 Judgment dated 15.10.2016 in OS WP No. 2067 of 2016

> friendly regime. In fact, the 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 returns. In this case, the return was filed on 29th November, 2015, yet there is no reason why the Assessing Officer has not processed the refund and taken a decision to grant or not grant a refund under Section 143(1D) of the Act. This attitude on the part of the Assessing Officer leaves us with a feeling (not based on any evidence) that the Officers of the Revenue seem to believe that it is not enough for the assessee to please the deity (Income Tax Act) but the assessee must also please the priest (Income Tax Officer) before getting what is due to him under the Act. The officers of the State must ensure that their conduct does not give rise to the above feeling even remotely.

14. Thus, even under the provisions of sub-section (1D) of Section 143 before its substitution by Finance Act of 2017, the Court did not approve unjustifiable delay in processing of return and thereby delay the refund of the assessee arising therefrom. Section 241A has since been inserted in the Act and as the notes on clauses explaining the provisions of Finance Bill, 2017 provides, in order to address the grievance of delay in issuance of refund in

genuine cases which are routinely selected for scrutiny assessment, it was proposed that provisions of Section 143(1D) shall ceases to apply in respect of returns furnished for assessment year 2017-18 and onwards. However, to address the concern of recovery of revenue in doubtful cases, it was directed to insert a new section 241A to provide that, for the returns furnished for assessment year commencing on or after 1st Apfril, 2017, where refund of any amount becomes due to the assessee under Section 143(1) 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 upto the date on which the assessment is made.

15. This Section, therefore, had two objects to achieve; firstly, 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. Second object was 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 powers vested with the Assessing Officer are not unguided or unlimited. 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. These are, thus, safeguards against arbitrary or unguided exercise of powers.

16. In this background, firstly we must observe that the auto-generated communication dated 24.3.2019 which contained the note of withholding of the refund in terms of Section 241A of the Act, does not satisfy any of the legal

tests for passing said order. Firstly, it is not passed by the Assessing Officer who is competent to do so. Secondly, it is not even an order, it is a mere auto-generated communication. Thirdly, it does not contain any reasons recorded in writing and lastly it is not passed with the prior approval of the Principal Commissioner or Commissioner. 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 assessees for withholding the returns.

17. The issue does not rest here since the Assessing Officer has thereafter passed order dated 21.8.2019 with the previous approval of the competent authority and citing

reasons for withholding the refund of the petitioner. We may examine such reasons. Broadly, the Assessing Officer has referred to the preceding return of the assessee for the assessment year 2016-17 in which the assesee had declared an income of Rs. 286.86 crores as against which in the present year, the assessee has declared huge loss. He, therefore, formed an opinion that the return for the assessment year 2017-18 needs thorough investigation. He also referred to several issues such as revenue share license fees, discount to prepaid distributors and non-deduction of tax at source on the same, international roaming charges and non-deduction of tax at source on such charges etc which are pending with the Income Tax Appellate Tribunal. He, therefore, concluded that there is likelihood of huge demand. In order to protect the interest of the revenue, he ordered withholding of the entire refund of the assessee arising from the processing of the return under Section 143(1) of the Act.

18. Merely because in the immediately preceding assessment year 2016-17, the assessee had declared a

positive income as against substantial loss declared in the present assessment year, that by itself, cannot be a ground to doubt the contents of the return or the claim of the assessee with respect to the loss suffered. The reference to the several issues which are common in the present assessment year and which are pending before the Tribunal, also in facts of the case would not be a ground to withhold the refund. This is so for the following reasons.

19. We are prepared to proceed on the basis that the Assessing Officer in relation to such issues, in case of the assessee for the earlier assessment years, has already taken a view adverse to the assessee. However, such issues are pending before the Tribunal at the hands of the assessee. Learned counsel for the petitioner had argued that even if all these additions are sustained in the present assessment year, the total loss declared by the assessee will under no circumstances be wiped out so as to result in assessment of positive income. He had, at our instance, filed a short affidavit dated 7.10.2019 of one Mr. Vaibhav Mangal on behalf of the petitioner in which it is stated as under :-

"3. I say that the estimated amount of adjustment to income

> required in respect of the issues referred to in paragraph 3 of the reasons recorded by respondent No. 1A under Section 241A of the Act would be Rs. 15,26,37,83,152. Assuming without admitting that the entire amount is added to the petitioner's income, its assessed income would continue to be a loss. This is apart from the fact that the said issues also stand substantially covered in the Assessee's favour. Hereto annexed and marked as **Exhibit - 'O'** is a copy of the Chart quantifying the estimated amount of adjustment and also giving details of orders by which the issue stands covered."

20. Learned counsel for the revenue, of course, controverted some of these details provided by the petitioner and submitted that the assessment is yet to be completed and therefore, the declarations made by the petitioner in this respect cannot be accepted without further scrutiny. In this context, he had relied on profit and loss account filed by the petitioner along with return.

21. At this interim stage, it is not necessary for us to examine these minute details, the nature of additions which would be sustained and if sustained, what exactly would be the impact of the petitioner's liability in the current year. We had called for the affidavit for gathering broader picture that in any view of the matter, accepting the stand of the Assessing Officer, there would still not be any tax demand

from the assessee in the current assessment year. We have perused such material and are prima facie satisfied with the petitioner's contention in this respect. We may note that the assessee has declared loss of over Rs. 6000/- crores.

22. One another significant aspect of the matter is the application filed by the petitioner under Section 197 of the Act before the Deputy Commissioner of Income Tax (TDS) on 17.5.2016. As is well known, under sub-section (1) of Section 197 of the Act, it is open for the competent authority upon justification being made by the assessee to permit deduction of tax at source by the payees at a lower rate or provide that no deduction at all shall be made. For the present assessment year 2017-18, the assessee had in the said application dated 17.5.2016 cited grounds and stated reasons why such deduction of tax be waived. According to the assessee, the financial condition of the assessee did not justify deduction of such tax at source. Interestingly, the Deputy Commissioner (TDS) decided this application by an order dated 30.3.2017 permitting deduction of tax at source at ‘NIL’ rate. We are conscious that consideration under

Section 197 of the Act is of prima facie nature and any order that may be passed either allowing the application partly or fully or rejecting it, is always subject to the final order of assessment that may be passed. However, the said order dated 30.3.2017 also manifests a prima facie belief of the Deputy Commissioner (TDS) that looking to the financial condition of the assessee for the present assessment year, no deduction of tax at source would be justified. Had the application of the petitioner made in the month of 2017 been decided in time, the assessee would have suffered no deduction of tax at source at the time of receiving payments from the payees and resultantly, there would have been no requirement for seeking refund from the department upon filing of the return. It was only because the consideration and disposal of the application was delayed and finally made only a couple of days before the end of the financial year, that the payees of the assessee had to continue deduction of tax at source at prescribed rates and correspondingly, the assessee had to suffer such tax deduction for virtually the entire year.

23. The decision of the Delhi High Court was rendered in the background of unamended Section 143(1D) of the Act and can have no direct application in the present case which arises out of order passed under Section 241A of the Act.

24. Considering these aspects of the matter, we do not find that the exercise of powers by the Assessing Officer fulfills 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 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.

25. Both the petitions are allowed and disposed of accordingly.

[S.J. KATHAWALLA, J.] **[AKIL KURESHI, J ,]**