



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF NOVEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE B M SHYAM PRASAD

WRIT PETITION NO. 19995 OF 2023 (T-IT)

BETWEEN:

M/S MYNTRA DESIGNS PRIVATE LIMITED
A COMPANY INCORPORATED UNDER THE
COMPANIES ACT, 1956
THROUGH ITS AUTHORIZED SIGNATORY
MS PAVITRA KUMAR,
HAVING OFFICE AT
BUILDINGS ALYSSA, BEGONIA AND CLOVE,
EMBASSY TECH VILLAGE,
OUTER RING ROAD,
DEVARABEESANAHALLI VILLAGE,
BENGALURU-560103

...PETITIONER

(BY SRI. TARUN GULATI, SENIOR ADVOCATE FOR
SRI. AJAY J NANDALIKE., ADVOCATE)



AND:

1. THE NATIONAL FACELESS ASSESSMENT CENTRE
THROUGH THE COMMISSIONER OF INCOME TAX-1
NATIONAL FACELESS ASSESSMENT CENTRE,
4TH FLOOR, MAYUR BHAWAN,
CONNAUGHT CIRCUS
NEW DELHI-110001
2. THE DEPUTY COMMISSIONER OF INCOME TAX
CIRCLE 4(1) (1),



BMTC BUILDING, 80 FT ROAD,
6TH BLOCK, KORAMANGALA
BENGALURU-560095

3. THE ADDITIONAL COMMISSIONER OF
INCOME TAX
RANGE 4(1), BMTC BUILDING, 80 FT ROAD,
6TH BLOCK, KORAMANGALA
BENGALURU-560095
4. THE PRINCIPAL COMMISSIONER OF INCOME TAX-2
BMTC BUILDING, 80 FT ROAD,
6TH BLOCK, KORAMANGALA
BENGALURU-560095
5. THE CENTRAL PROCESSING CELL
THROUGH THE COMMISSIONER OF INCOME TAX
CENTRAL PROCESSING CELL
PRESTIGE ALPHA, POST BOX NO.2,
ELECTRONIC CITY POST
BENGALURU-560500

...RESPONDENTS

(BY SRI. Y.V.RAVIRAJ A/W SRI. M.DILIP,
ADVOCATES)

THIS WP IS FILED UNDER ARTICLE 226 OF
THE CONSTITUTION OF INDIA PRAYING TO
DIRECT THE RESPONDENTS TO ISSUE THE
REFUND OF INR 29,30,46,736/- AS COMPUTED
UNDER REFUND INTIMATION DATED 22/09/2022
BEARING DIN CPC/2122/A6/243697378 (AT
ANNEXURE-A) ALONG WITH APPLICABLE INTEREST
UNDER SECTION 244A.

THIS PETITION, COMING ON FOR ORDERS,
THIS DAY, THE COURT MADE THE FOLLOWING:



ORDER

The petitioner has filed this petition for directions to the Respondents to issue refund of Rs.9,30,46,736/- as computed under Refund Intimation dated 22.09.2022 bearing DIN: CPC/2122/A6/243697378 [Annexure A] along with applicable interest under Section 244A of the Income Tax Act, 1961 [for short, 'the IT Act'] in an expeditious and timely manner. Sri. Tarun Gulati, the learned Senior counsel for the petitioner, and Sri. Y.V.Raviraj, the learned Senior standing counsel for the respondents, are heard.

2. The petitioner, for the Assessment Year 2021-22 is informed about the computed refund in a sum of Rs.31,94,20,940/- [including the principal amount in a sum of Rs.29,35,11,360/-], and this computation is as of 22.09.2022. On 16.05.2023, the third respondent [*the jurisdictional Additional Commissioner of Income Tax*], referring to the



withholding of refund to the petitioner for the Assessment Year 2021-2022, has informed the first respondent [*the Assessing Officer with the National Faceless Assessment Centre - NaFAC*] that:

- the petitioner is reporting a loss to the tune of Rs.3,325.85/- Crores and this loss can cover any addition proposed, and
- in the past there have been no addition and as such, withholding of refund may be re-list-examined considering whether it would be so warranted despite carry forward loss as aforesaid.

3. Sri. Tarun Gulati, the learned Senior counsel for the petitioner, on one of the previous hearing dates, had canvassed that the refund was being withheld without affording an opportunity and without recording an opinion as would be required under Section 241A of the IT Act, and as such, the respondents were permitted to place on record the



opinion recorded by the Assessing Officer and the permission granted by the concerned Principal Commissioner of Income Tax, if any.

4. In response, Sri. Y.V.Raviraj, the learned Senior standing counsel for the respondents, has placed on record a copy of the Communication dated 20.12.2022 addressed by the Assistant Commissioner of income Tax, ReAc (AU)-1(2)(1), Surat to the Principal Commissioner of Income Tax (AR)-1 and the approval granted by the aforesaid Principal Commissioner of Income Tax (AR)-1. Sri. Tarun Gulati, with the assistance of these documents, canvasses:

4.1 that the Assistant Commissioner of Income Tax, ReAc (AU)-1(2)(1), without recording an opinion on whether grant of refund would likely affect the revenue adversely as is required under the provisions of Section 241A of the IT Act, has stated that because scrutiny assessment is pending with the



Transfer Pricing Officer [TPO], the refund may be withheld,

4.2 that the Assistant Commissioner of Income Tax, ReAc (AU)-1(2)(1), in the Communication dated 20.12.2022, has referred to eleven different instances, including the petitioner's instance citing the same reason and this indicates lack of application of mind.

4.3 that the Principal Commissioner of Income Tax (AU)-1, without even observing that the Assistant Commissioner of Income Tax, ReAc (AU)-1(2)(1), Surat has not recorded that the revenue's interest would be adversely impacted if refund is granted, has once again granted permission for withholding the refund recording the details.

4.4 that the first respondent has filed affidavit for the first time before this Court mentioning a reference for transfer pricing parameter



and an investigation by the foreign jurisdiction to justify withholding the refund, but the reason must be as available as of the date the computation under Section 143(1) of the IT Act,

4.5 that if the petition is disposed of without directions to refund because of the reasons now filed this Court would be permitting supplementing reasons to justify an illegal decision.

5. Sri. Tarun Gulati, insofar as the law on the issue relies upon the decision of the High Court of Delhi in ***Ericsson India (P.) Ltd. Vs. Additional Commissioner of Income Tax***¹ stating that this decision is confirmed by the Hon'ble Supreme Court in ***Additional Commissioner of Income-tax Vs. Ericsson India (P.) Ltd***². [the learned Senior Counsel emphasizes that the revenue authorities cannot act as a stifling force or a stumbling block and create

¹. [2020] 117 taxmann.com 381 (Delhi)

² [2021] 128 taxmann.com 418 (SC)



constraints in unjustifiably withholding refund taking a short cited approach; that a pending regular assessment cannot be a reason for withholding the funds, and that the Assessing Officer must, while seeking permission of the Principal Commissioner of Income Tax, must record an opinion that grant of refund would in all likelihood affect the revenue adversely and such opinion must be supported by cogent reasons.

6. Sri. Y.V.Raviraj submits that the petitioner cannot dispute that if there is a reference to the TPO to examine the transfer pricing and the investigation is on, that there is every likelihood that the withholding of refund would be justified, and in any event, the assessment would be considered expeditiously and the permissible refund would be allowed.

7. The rival submissions are considered in the light of the law as expounded in ***Ericsson India***



(P.) Ltd. Vs. Additional Commissioner of Income

Tax supra. The material part of the provisions of Section 241A of the IT Act read as hereunder:

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.

The concerned Assistant Commissioner of Income Tax, ReAC (AU)-1(2)(1), Surat, notwithstanding the requirements under Section 241A of the IT Act, has record thus in the Communication dated 20.12.2022:

<i>Name of the Assessee</i>	<i>PAN</i>	<i>A.Y.</i>	<i>Amount</i>	<i>Remarks</i>
<i>MYNTRA DESIGNS PRIVATE LIMITED</i>	<i>AAECM9636P</i>	<i>2021-22</i>	<i>319420940</i>	<i>Pending with TPO</i>



This reason is typical to the other instances mentioned in this Communication. The Principal Commissioner of Income-tax (AU)-1 has approved the withholding of refund recording that reference to the TPO is pending and there is every likelihood of raising a demand.

8. This Court, upon examining the opinion and the reasoning offered by the Assistant Commissioner of Income Tax, ReAC (AU)-1(2)(1), Surat and the reasons recorded while granting approval, must opine that the consideration falls short of the requirements under the provisions of Section 241A of the IT Act, which stipulate that the Assessing Officer, having regard to the fact that notice has been issued under sub-section (2) of Section 143, must record in writing an opinion with reasons on how the revenue's interest would be adversely affected if refund is allowed. The withholding of the refund in the manner as now



considered by the Assistant Commissioner of Income Tax, ReAC (AU)-1(2)(1), Surat cannot be accepted, and there must be interference by this Court.

9. This Court must record that it is undisputed that the petitioner has claimed refund for the Assessment Years prior to the Assessment Year 2021-22. The Principal Commissioner of Income-tax (AU)-1 has granted approval recording the details of the carry forward losses for the corresponding years, and consequentially, the petitioner is admitted to refund for the Assessment Years 2018-19, 2019-20 and 2000-21 in sums of Rs.3,74,99,394/-, Rs.6,46,37,530/- and Rs.14,34,81,214/- respectively. The petitioner has reported a carry forward loss to the tune of Rs.3,325.85/- Crores for the present Assessment year. The Revenue as against the principal sum of Rs.29,35,11,360/- will have to pay interest in excess of Rs.2,00,00,000/-,



imposing a burden on the exchequer, if there is a delay.

10. Further, if indeed a reference to the transfer pricing officer is under investigation, it would suffice for this Court to observe that if the adjudication, after due process, results in a demand, the petitioner will have to answer the demand, but in anticipation of a conclusion for a demand without even recording the reasons, the petitioner cannot be denied the refund. There are overwhelming circumstances as established by the undisputed facts. In the light of the above, the petition must be allowed directing the respondents to refund a sum of Rs.29,30,46,736/- along with interest as is permissible in law within a timeframe without prejudice to recover demand on the conclusion of the pending proceedings. Hence, the following:



ORDER

- i. The petition is allowed.
- ii. The first and the fifth respondents [*National Faceless Assessment Centre through the Commissioner of Income Tax-1 and Central Processing Cell through the Commissioner of Income Tax*], are directed to take appropriate action for refund of a sum of Rs.29,30,46,736/- along with permissible interest under Section 244A of the IT Act, and the measures shall be taken by the aforesaid respondents to ensure that the petitioner has the advantage of the refund as afore permitted within eight [8] weeks from the date of receipt of a certified copy of this order.

**Sd/-
JUDGE**