



Pending tax refunds – High Courts provide substantial relief

Background

Over the past few years, taxpayers have faced multiple challenges in obtaining income-tax refunds, in part due to tight fiscal situation of the Government treasury. In the recent past, there have been several High Court orders¹ (especially the Bombay High Court) pursuant to writ petitions filed by taxpayers across the country for grant of tax refund claimed in the Return of Income ('ROI').

The Income-tax department had, in several instances, sought to withhold the refund by either exercising the option to not process the ROI where scrutiny proceedings have been initiated or by exercising its powers to withhold refunds in certain cases. For various taxpayers, High Courts have directed the tax department to process the ROI and grant the refund claimed by the taxpayer within a stipulated time limit.

Relevant provisions of the Income-tax Act, 1961 ('Act')

Section 143(1) of the Act provides that an intimation must be issued after processing the ROI within one year from the end of the financial year in which the ROI was filed and refund due to the taxpayer must be granted. Section 143(1D) of the Act draws an exception and provides that where a scrutiny notice has been issued to the taxpayer under section 143(2), the Assessing Officer ('AO') has a discretion to not process the ROI.

To address the grievance of delay in granting refund, section 143(1D) was made inapplicable from assessment year ('AY') 2017-18 onwards. Simultaneously, to alleviate the concern of recovery of demands in doubtful cases, section 241A was inserted giving the AO the power to withhold the refund (after due approval), where its grant may adversely affect the revenue.

¹ WP 2145 / 2172 of 2019
WP 894 of 2019



Accordingly, with respect to ROI filed for AY 2017-18 onwards, the AO is required to mandatorily process the same and issue an intimation under section 143(1) of the Act, irrespective of whether a notice for detailed scrutiny is issued or not.

Recent High Court orders

Several taxpayers made repetitive attempts requesting the AO to process refunds due as per their ROI. Being unsuccessful in obtaining refunds, taxpayers filed writ petitions to the High Court. In recent orders, High Courts have held that refund due as per the ROI cannot be withheld merely on the ground that a notice for scrutiny has been issued under section 143(2). It has been further held that the powers vested with the AO under section 241A cannot be used arbitrarily.

While deciding the issues in the favour of taxpayers, the Courts made the following important observations:

- The AO cannot avoid processing the ROI and granting the refund to the taxpayer where it is due as per the ROI
- A refund should not be withheld even in a case where draft assessment order is passed by the AO, which if finalized, would crystallize into a demand
- Even where the time limit for issuing an intimation under section 143(1) has elapsed, the AO must process the ROI and grant the consequent refund
- A computer system glitch cannot override the correct legal position that the taxpayer must receive the refund. Where the system does not permit the payment of refund, the AO must manually do so
- The exercise of power under section 241A is subject to the AO forming and recording in writing a bonafide opinion that the grant of refund will adversely affect recovery of revenue at a later stage
- Even where the issues in the current year are similar to those disputed in past years, the same cannot be a ground to withhold the refund under section 241A of the Act

To summarize, despite section 143(1D) of the Act in place, Courts have held that pendency of scrutiny proceedings cannot be an impediment to grant a refund and that under the garb of this section, the AO cannot withhold the refund which is otherwise due to the taxpayer.

In this context, it is pertinent to note that there are several High Court orders which lay down the principle that no adjustment of refund due to a taxpayer should be made against the demands for other years which are stayed by the relevant authorities.

Dhruva Comments

The above High Court orders would be relevant to taxpayers in whose case refunds are due as per the ROI filed for AY 2016-17 onwards.

Where scrutiny proceedings for AY 2016-17 are currently ongoing, taxpayers need not wait for completion of assessment proceedings to pursue their refund claims. Further, withholding of refunds under section 241A of the Act cannot be routinely done unless extraordinary



circumstances merit such withholding. Therefore, taxpayers having large refunds pending to be released by the Income-tax department may develop a strategy to explore possible alternatives post seeking professional advice on the matter.

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