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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 7003/2019

MAPLE LOGISTICS PRIVATE LIMITED & ANR Petitioners

Through: Mr. Amit Sibal, Sr. Advocate
with Mr. Sandeep, Mr. Devang
and Mr. Ashutosh, Advocates.

versus

PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX & ORS.

..... Respondents

Through: Ms. Lakshmi Gurung, Mr.
Tushar Gupta, Ms. Easha
Kadian and Mr. Sidharth Gupta,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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14.10.2019

C.M. No. 40122/2019

By this application, the petitioner seeks early hearing of the writ petition. The application is allowed.

W.P.(C) 7003/2019

We have heard learned counsels at length. Learned counsel for the respondents has produced, before us, the relevant file which contains the proforma enlisting the reasons for issuance of notice under Section 143(2) of the Income Tax Act to the petitioner which, she states, were the reasons looked at by the Assessing Officer while putting up his proposal to the Principal Commissioner of Income-Tax for withholding of the refund under Section 241 A. A copy of the relevant documents has been retained. Considering the nature of the controversy and since

the preparation of the detailed order is likely to take some time, in view of the urgency, we proceed to dictate the operative part of the order.

We find that the exercise undertaken by the respondents under Section 241A of the Act is not in consonance with Section 241A inasmuch, as the Assessing Officer has not given due regard to the facts of the case and he has not applied his mind as to why the refund is likely to adversely affect the revenue. There are no reasons recorded in writing by him to justify withholding of the refund due to the petitioner in terms of Section 143(1) for the assessment year 2017-18 and we also find that the Principal Commissioner of Income Tax, in the present case, while granting his approval has also not examined the reasons for passing the order under Section 241A and the relevant and germane considerations have also not received the attention of the Principal Commissioner of Income Tax.

We, accordingly, find that the entire exercise under Section 241A has not been correctly undertaken by the respondents. At the same time, we are conscious of the fact that the Scrutiny Proceedings under Section 143(2) were initiated by issuance of notice, as early as on 17.08.2018 i.e. even before the issuance of the intimation under Section 143(1), which was issued on 16.03.2019.

We, therefore, grant two weeks time to the respondents to consider the aspect whether the amount found due to be refunded, or any part thereof, is liable to be withheld under Section 241A. While doing so, the Assessing Officer shall, firstly, with reasons, make a prima facie assessment of the probability that additions would be made in the

Scrutiny Assessment Proceedings, secondly; he shall make an assessment of the quantum of additions, if any, that may be made to the income returned, and the likely tax effect that such additions may have, thirdly; he should assess the financials and financial standing of the petitioner with regard to its ability to meet and service any demand for tax that may be raised as a result of the Scrutiny Proceedings; and also take into consideration such other factors eg. past demands, any outstanding litigation and the past conduct of the assessee etc. All the aforesaid aspects should be examined to ascertain if the payment of the refund, or any part thereof, are likely to have adverse affect on the Revenue. The order must reflect due application of mind of the Assessing Officer while making a proposal whether, or not, to withhold any part of the refund amount. Such a proposal should be examined by the Principal Commissioner of Income Tax with due application of mind on all the aforesaid aspects. The entire consideration, with the approval of the Principal Commissioner of Income Tax to the withholding of the refund amount, or any part thereof, should be completed within two weeks from today, failing which, we direct that without awaiting any further orders, the respondents shall transmit the amount of Rs. 4,79,93,740/- with interest to the petitioner, upon the petitioner furnishing an undertaking that the said amount shall forthwith be deposited with the GST Authorities. We have laid down the aforesaid time line considering the fact that the refund was found payable as early as on 16.03.2019.

In the eventuality of the respondents recording any reasons for

withholding a part of, or the entire amount due for refund to the petitioner under Section 143(1), the reasons thereof as approved by the Principal Commissioner of Income Tax shall be provided to the petitioner forthwith. Needless to state that the reasons recorded for withholding of refund under section 241A would only amount to a tentative view and would not come in the way of the Assessing Officer to frame the assessment under section 143(3) of the Act.

The petition stands disposed of in the aforesaid terms.

The detailed reasons/ order shall be recorded separately.

Dasti under signature of Court Master.

VIPIN SANGHI, J

SANJEEV NARULA, J

OCTOBER 14, 2019

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