

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2435 OF 2019**

Vodafone Idea Limited ... Petitioner.
V/s.
Commissioner of Income-tax,
and ors. ... Respondents.

Mr. J.D. Mistri, Sr. Advocate a/w. Mr. Nitesh Joshi i/b Mr. Atul
Jasani for the Petitioner.
Mr. N.C. Mohanty for the Respondents.

**CORAM : AKIL KURESHI &
S.J.KATHAWALLA, JJ.**
DATE : OCTOBER 4, 2019.

P.C.

1] This petition is filed for a direction to the respondents-
the Income Tax authorities to refund an amount of
Rs.224,28,74,090/- with statutory interest. This demand of the
petitioner has a long history. It is not necessary to enter into
finer details thereof, few undisputable facts may however be
noted.

2] The petitioner is a public limited company and is
engaged in providing telecommunication services. For the



period relevant to assessment year 2015-16, the petitioner had suffered sizable deduction of tax at source, at the hands of payees, which was in excess of Rs.210/- crores. The return filed by the assessee for the said assessment year 2015-16 was scrutinized under Section 143(3) of the Income Tax Act, 1961 (the Act for short). The assessment order dated 25.02.2019 gave rise to a refund of the said sum of Rs.224,28,74,090/-.

3] Since the refund was not forthcoming, the petitioner wrote several letters to the department. At one stage, the department had raised the issue of pending demands for other assessment years. The petitioner clarified the position in this respect under a communication dated 05.03.2019, upon which, it appears that the department did not pursue this line any further.

4] Few more letters from the petitioner followed without department releasing the refund. In one such e-mail correspondence dated 26.8.2019, the petitioner pointed out that several meetings had taken place with the Income Tax



authority without resolution of the issues. The TDS mismatch of as small as Rs.1/- (on account of rounding off of the figure) was cited more than once for not releasing the refund. Eventually, the petitioner filed the present petition for the above noted prayer.

5] Learned Counsel for the petitioner submitted that the assessment order gave rise to the petitioner's claim for refund. There is no reason, no authority in law to withhold such refund. He submitted that at one stage the department had raised the ground of adjusting such refund against the pending tax demands of other assessment years. However, the petitioner had pointed out to the authorities that all such demands are either reversed by appellate authority or tribunal or are stayed. In other words, none of these demands could be adjusted to the petitioner's refund in question.

6] Learned Counsel Shri. N.C. Mohanty for the department candidly stated that the petitioner's refund claim has not been released on account of computer glitch at the central processing center presumably on account of the fact that



though the concerned demands are stayed by the appellate authority, the system is not accepting such position. He, therefore, submitted that the auto generation of refund could not be made because of this reason.

7] When material facts are not disputable, we do not see any reason why the petitioner should not get the refund which flows from the order of assessment. The department does not dispute that the demands for other assessment years of the petitioner are presently not enforceable. That being the position, the refund of the petitioner arising out of the order of assessment for the said assessment year 2015-16, cannot be withheld, that too on the ground of technical difficulty of the system not accepting such a declaration of stay of the demands and giving effect to such position .

8] The computer system and auto generation or any difficulty in doing so in a particular case, cannot override the correct legal position. In the present case, the correct legal position is that the petitioner must receive the refund. Whatever the technical difficulties in releasing the refund, the



department must sort it out. If for some reason of technical glitch the system in the present case fails to permit the payment of refund, the concerned authorized officer must manually do so. We, therefore, direct the respondents to release the petitioner's refund amount of Rs.224,28,74,090/- with statutory interest, which shall be done within a period of two weeks from the date of receipt of this order.

9] Before closing, we observe that this situation cannot be peculiar to the petitioner alone. Surely, before the department, there would be large number of cases of assesseees where the refund claim out of an order of assessment or appellate order arises as against which the same assessee may have demands for other assessment years, recovery of which, may have been suspended. In all such cases, similar difficulty may be faced by the department. We expect the department to address this larger issue so that similar disputes do not have to travel to the High Court for resolution.

This Order is modified/corrected by Speaking to Minutes Order dated 14/10/2019



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10] With these observations and directions, the petition is disposed of.

(S. J. KATHAWALLA, J.)

(AKIL KURESHI, J.)

This order is corrected in pursuance to the Speaking to the Minutes of Order dated 14.10.2019.

Dinesh Sherla

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