THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WP-LD-VC NO. 81 OF 2020

Vodafone Idea Limited
(Formerly known as Vodafone Mobile Services Limited ('VMSL') which merged with Idea Cellular Limited and now known as 'Vodafone Idea Limited' having its registered office at 10th Floor Birla Centurion, Century Mills Compound, Pandurang Budhkar Marg, Worli Mumbai-400030.
PAN:AAACB2100P ...Petitioner

....Versus....

1. **The Assistant Commissioner of Income Tax**
   Circle 5(2) (2), Mumbai having his address at Room No.571, 5th Floor, Aayakar Bhavan, Maharishi Karve Road, Mumbai-400020.

2. **The Principal Commissioner of Income Tax**,
   City-5, Mumbai having his address at Room No.515, 5th Floor, Aayakar Bhavan, Maharishi Karve Road, Mumbai-400020.

3. **Union of India**
   Department of Legal Affairs,
   Ministry of Law and Justice,
   Government of India,
   2nd Floor, Aayakar Bhavan,
   M. K. Road, Mumbai -400020. ...Respondents

Mr. J. D. Mistri, Senior Advocate alongwith Mr. Paras Savla, Mr. Harsh Shah i/b. Mr. Atul K. Jasani for the Petitioner.

Mr. Sham Walve for the Respondents.

CORAM: R. D. DHANUKA AND
MADHAV J. JAMDAR, JJ.
DATE : 26th JUNE, 2020

(IN CHAMBER THROUGH VIDEO CONFERENCE)

ORAL ORDER :- (***Per R. D. Dhanuka, J.***)

1. Heard Mr. Mistri learned senior counsel for the petitioner and Mr. Sham Walve learned counsel for the respondents.

2. Rule. Learned counsel for the respondents waives service.

3. Mr. Mistri learned senior counsel for the petitioner presses interim relief in terms of prayer clause (c) and refund of Rs.833,04,88,000/-. It would be appropriate to highlight some of the relevant facts for the purpose of the consideration of prayer for interim relief.

4. The petitioner has filed this Writ Petition *inter alia* praying for a Writ of Mandamus and seeks refund of refund of Rs.1009,43,88,637/- as quantified by order dated 28th May, 2020. In prayer clause (b) of the petition, the petitioner seeks admitted refund of Rs.833,04,88,000/- in accordance with the rectification/section 245 order dated 28th May, 2020. The petitioner had filed its return of income on 30th September,

2014 in the name of Vodafone Mobile Services Limited. The said income tax return was revised on 31st March, 2016 and further revised on 22nd February, 2017. On 31st October, 2019, the respondent No.1 passed an assessment order under Section 143(3) r/w. Section 144C of the Income Tax Act, 1961 (*for short the "Act"*) determining the refund of Rs.733,80,83,366/- payable to the petitioner on 7th November, 2019.

5. The petitioner filed an application for rectification under Section 154 of the Income Tax Act, 1961 seeking rectification of certain mistakes apparent from the record according to the petitioner. The petitioner filed another rectification application with the respondent No.1 on 3rd December, 2019 in view of the case of petitioner having been transferred from Delhi to Mumbai by order under Section 162 of the Act. Since the respondents did not grant any refund in favour of the petitioner, the petitioner filed a Writ Petition (Civil) No. 2733 of 2018 before the Delhi High Court. By the judgment and order dated 14th December, 2018, Delhi High Court dismissed the said Writ Petition. Being aggrieved by the said judgment and order, the petitioner preferred Special Leave Petition which was converted as Civil Appeal No. 2377 of 2020.

6. By the judgment and order dated 29th April, 2020, the Hon'ble Supreme Court insofar as assessment year 2014-2015 is concerned held that final assessment order passed under Section 143 of the Income Tax Act indicated that the

petitioner was entitled for refund of Rs.733 Crores while in assessment year 2015-16 there was a demand of Rs.582 Crores. The respondents urged before the Hon'ble Supreme Court that the demand in respect of earlier assessment years including the liability as a result of order dated 28th December, 2019 being outstanding, the respondents would be entitled to invoke the requisite power under Section 245 of the Act to set off the amount of refund payable in respect of assessment year 2014-15 against tax remaining payable.

7. The Hon'ble Supreme Court accordingly held that since requisite action was not even initiated, the Hon'ble Supreme Court said nothing in that respect. The respondents were accordingly directed that the amount of Rs.733 Crores shall be refunded to the petitioner within four weeks from the date of the said order subject to any proceedings that the Revenue may deem appropriate in accordance with law. The respondents were directed to conclude the proceedings initiated pursuant to the notice under sub-section (2) of Section 143 of the Act in respect of assessment year 2016-2017 and 2017-2018 as early as possible. Except those directions issued in paragraph No.23 of the said judgment, the Hon'ble Supreme Court did not interfere with the impugned judgment and order passed by the Delhi High Court and dismissed the said Civil Appeal without any order as to costs.

8. Pursuant to the said judgment and order dated 29th April, 2020 delivered by the Hon'ble Supreme Court, the respondent no.1 issued an intimation under Section 245 of the

Act. In the said intimation, it was the case of the respondent no.1 that as per their records, a sum of Rs.8640827138/- was outstanding against the petitioner in respect of various assessment years i.e. 2000-01, 2004-05, 2005-06, 2006-07, 2007-08, 2012-13 and 2018-19. By the said intimation, the respondents proposed to set off the outstanding demand against the refund for the assessment year 2014-2015 arrived in case of the petitioner formerly known as Vodafone Mobile Services Limited. The petitioner was directed to inform the respondents in case of any of those demands mentioned in the said notice was stayed by any Court.

9. The said intimation under Section 245 of the Act was strongly objected by the petitioner by email dated 13th May, 2020 on various grounds. The petitioner also brought on record the order passed by the Income Tax Appellate Tribunal for the assessment year 2006-07 and pendency of various Stay Applications filed by the petitioner. The petitioner contended in the said reply that the refund due for assessment year 2014-15 could not be adjusted against outstanding demand for the assessment year 2012-2013 and for various other assessment years on various grounds. On 19th May, 2020, the petitioner filed additional response to the intimation under Section 245 of the Act and strongly raised the objection to the said action on the part of the respondent no.1.

10. On 28th May, 2020, the respondent No.1 passed an order under Section 154 of the Act read with Section 143(3) of the Income Tax Act, 1961. Insofar as assessment year 2014-

2015 is concerned, the respondent No.1 held that the petitioner was entitled to refund of Rs.1009,43,88,637/-. The respondent No.1 in the said order however also held that the demand for several years was pending against the petitioners for the sum of Rs.176,3900637/-. The respondent No.1 deducted the said amount of Rs. 176,3900637/- out of the refund amount of Rs. 1009,43,88,637/- and determined the net refundable amount at Rs.833,04,88,000/-.

11. The petitioner vide its email dated 11th June, 2020 to the Principal Commissioner of Income Tax demanded refund by seeking compliance of the order dated 29th April, 2020 passed by the Hon'ble Supreme Court. The petitioner thereafter sent various reminders to the respondents for seeking refund and compliance of the order passed by the Hon'ble Supreme Court. The respondents however, did not refund any amount to the petitioner including Rs.833,04,88,000/- which according to the respondents was due and payable to the petitioner. The petitioner thus, filed this petition inter alia praying for various reliefs. Pursuant to the order dated 23rd June, 2020 passed by this Court, respondents filed affidavit-in-reply dated 24th June, 2020. The petitioner filed affidavit-in-rejoinder dated 25th June, 2020.

12. Mr. Mistri learned senior counsel for the petitioner invited our attention to the order passed by the Hon'ble Supreme Court in Civil Appeal No. 2377 of 2020 and various annexures to the petition including the order passed by the respondent no.1 on 28th May, 2020 holding that the net

refundable amount of Rs. 833,04,88,000/- was due and payable to the petitioner. He submits that the Hon'ble Supreme Court though had directed the respondents to refund amount of Rs.733 Crores to the petitioner within four weeks from the date of the said order subject to any proceedings that the Revenue may deem appropriate to initiate in accordance with law, the respondent did not refund the said amount in compliance with the order passed by the Hon'ble Supreme Court. He submits that the respondents themselves had invoked Section 245 of the Act seeking adjustment of the alleged demand against the refund payable to the petitioner.

13. It is submitted that the order passed by the respondent No.1 on 28th May, 2020 was a common order disposing off all the applications for rectification filed by the petitioner under Section 154 of the Act and also the notices issued by the respondents under Section 245 of the Act seeking adjustment of the alleged outstanding dues of the petitioner against the amount of refund due to the petitioner. He submits that even according to the respondents, after adjusting the demand of the respondents against the petitioner, the net refundable amount payable to the petitioner as Rs.833,04,88,000/-.

14. Learned senior counsel submits that at the first instance the respondents could not have adjusted even the sum of Rs.176,3900,637/- against the amount of Rs.1009,43,88,637/- found refundable to the petitioner under the said order. In his alternate submission, he submits that in

any event the respondents could not have withheld the said net refundable amount Rs.833,04,88,000/-. The learned senior counsel accordingly presses an interim relief for admitted refundable amount of Rs.833,04,88,000/-.

15. It is submitted by the learned senior counsel that once respondent No.1 having exercised power under Section 245 of the Act and holding that the amount of Rs.176,3900,637/- was adjustable against the gross refund of Rs.1009,43,88,637/- and determining the net amount of Rs.833,04,88,000/- as refundable to the petitioner, there is no question of withholding the sum of Rs.833,04,88,000/- admittedly due and refundable to the petitioner on the grounds set out for the first time in the affidavit-in-reply. He submits that there is no provision under the Act permitting withholding of the said admitted amount once having passed an order by the respondent No.1 himself under Section 154 read with Section 245 of the Act.

16. Learned Senior Counsel also invited our attention to some of the contentions raised by the respondents in affidavit-in-reply. He submits that the provisions of Section 241-A of the Act sought to be pressed in service by the respondents in paragraph No.5 of the affidavit-in-reply is not applicable to the petitioner insofar as refund for the assessment year 2014-15 is concerned. The said provision would apply only for the assessment year 2017-2018 onwards. He submits that the respondent No.1 has issued refund of approximately Rs.706 crores pertaining to assessment year

2017-2018 to the petitioner in pursuant to the decisions of this Court. The respondent No.1 did not challenge the said order passed by this Court before the Hon'ble Supreme Court. Learned senior counsel submits that proceedings initiated by the respondents under Section 245 of the Act has been already ended in view of the common order dated 28th May, 2020 passed under Section 154 read with Section 245 of the Act. He submits that as on today, there is no demand for the assessment year 2016-2017.

17. Learned senior counsel submits that there is no provision in the Act, which allows the respondents to withheld refunds in anticipation of tax determination which may arise in future.

18. Mr. Walve learned counsel for the respondents on the other hand, strongly pressed in service Section 241A of the Income Tax Act 1961 and would submit that since huge outstanding demand has been pending against the petitioner, the Assessing Officer has initiated proceedings under Section 241A of the Act against the petitioner to withheld the refund after following prescribed procedure laid down in the Act. He submits that the petitioner has claimed refund in several years and total value is more than the outstanding demand excluding the stay against the demands raised by the respondents. The learned counsel for the respondents submits that action of the respondents to withhold the refund under Section 241A is justified in view of the liberty granted by the Hon'ble Supreme Court in the order dated 29th April, 2020.

19. Learned counsel placed reliance on the judgment of Delhi High Court in the case of ***Maruti Suzuki India Ltd. V/ s. Deputy Commissioner of Income Tax [2012] 347 ITR 43 (Delhi)*** and more particularly, paragraph Nos. 17 and 25 in support of his submission that the respondents were justified in withholding the refund due to the petitioner for the assessment year 2014-15 by invoking section 241-A of the Act.

20. Mr. Mistri learned senior counsel for the petitioner in rejoinder distinguished the judgment of Delhi High Court in case of ***Maruti Suzuki India Ltd. V/s. Deputy Commissioner of Income Tax*** (Supra). He submits that in the facts of that case, Delhi High Court has held that the conduct and action of respondent-Revenue in recovering the disputed tax in respect of additions to the extent of Rs.96 Crores on the issues which were already covered against them by the earlier orders of the ITAT or CIT(Appeals) was unjustified and contrary to law. Learned senior counsel submits that the respondents cannot withhold the amount of refund admittedly due by seeking adjustment of the tax liability which may arise according to the respondents in future. He submits that the entire action on the part of the respondents is in gross violation of judgment and order of the Hon'ble Supreme Court dated 29th April, 2020 directing the respondents to refund the amount of Rs. 733 Crores and also contrary to the order passed by the respondent No.1 himself holding that the petitioner was entitled to net refundable amount of Rs. 833,04,88,000/-.

21. A perusal of the record clearly indicates that insofar as assessment year 2014-15 is concerned, the Hon'ble Supreme Court by judgment and order dated 29th April, 2020 had already directed the respondents to refund a sum of Rs.733 Crores to the petitioner however subject to any proceedings that the Revenue may deem appropriate to initiate in accordance with law. The respondent No.1 had already issued two notices dated 8th May, 2020 and 13th May, 2020 respectively inter alia seeking adjustment of the refund in sum of Rs.953,75,27,138/- against the refund payable to the petitioner for the assessment year 2014-15.

22. A perusal of the order dated 28th May, 2020 passed by the respondent No.1 clearly indicates that said order was the common order passed in the application filed by the petitioner under Section 154 of the Act and also under Section 245 of the Act. Adjustment of the alleged tax dues which was required to be made according to the respondents against the refund amount due to the petitioner in the assessment year 2014-15 was already made by the respondent No.1 in the said order. The said order, insofar as respondents are concerned, has attained finality. The question as to whether the respondent No.1 could have adjusted the sum of Rs.176,3900637/- or not is an issue raised in this Writ Petition. The said issue would be decided by this Court at the stage of final hearing of the Writ Petition.

23. However, insofar as the net refundable amount of Rs. 833,04,88,000/- is concerned, in our view, the respondents

already having invoked their powers under Section 245 of the Act which action has ended with passing of the order dated 28th May, 2020, the respondents cannot withheld the admitted refundable amount of Rs. 833,04,88,000/- on the ground that the respondents may have a future demand against the petitioner arising out of the pending assessment orders. In our view, there is no such power vested in the respondents to adjust the admitted refund amount against the tax dues which are not even adjudicated upon by the respondents and may arise in future as contemplated/visualized by the respondents.

24. Insofar as the provisions of Section 241A of the Act pressed in service by the respondents and that also only in the affidavit-in-reply for the first time is concerned, it would be appropriate to quote the said Section to appreciate the submission made by the respondents. Section 241A of the Income Tax, 1961 reads thus:-

> *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.*

25. Respondents cannot be allowed to invoke section 241-A for the first time in the affidavit in reply to the

writ petition filed by the petitioner. Be that as it may, a plain reading of the said provision makes it clear that the power to withhold the refund granted to the Assessing Officer is subject to the previous approval of the Principal Commissioner or Commissioner, as the case may be and that also would be for every assessment year after 1st April, 2017 where refund of any amount becomes due to the assessee under the provisions of sub-section(1) of section 143 and not for the earlier assessment year. The assessment year in question in this case is 2014-15. In our view , the Section 241A pressed in service even in the affidavit-in-reply or otherwise is not attracted to the refund of assessment year 2014-15 or any assessment year prior to 2017-18.

26. It is not in dispute that as on today, there is no determination of any further tax liability for any other assessment year which liability can be adjusted against the admitted refundable amount determined by the respondent No.1 assuming Section 241A is applicable or otherwise. Even otherwise no approval is granted by the Principal Commissioner or Commissioner as the case may be to withhold the refund up to the date on which the assessment is made. In this case, the assessment order under Section 143(1) for the assessment year 2014-2015 has already attained finality resulting in refund of amount in view of the judgment delivered by Hon'ble Supreme Court on 29th April, 2020 and the order dated 28th May, 2020 passed by the respondent no.1.

27. Insofar as the reliance placed by the learned counsel for the respondents on the judgment of the Delhi High Court in the case of ***Maruti Suzuki India Ltd. V/s. Deputy Commissioner of Income Tax*** is concerned, in our view, the said judgment is not even remotely applicable to the facts of this case. Reliance placed by the learned counsel on the said judgment is totally misplaced.

28. We accordingly pass the following order:-

ORDER

(a) The respondents are directed to refund a sum of Rs.833,04,88,000/- to the petitioner within two weeks from the date of uploading of this order without fail.

(b) This order will be digitally signed by the Personal Secretary/Personal Assistant of this Court. Associate of this Court is permitted to forward the petitioner and the respondents copy of this order by email. All concerned to act on digitally signed copy of this order.

(MADHAV J. JAMDAR, J.) **(R. D. DHANUKA, J.)**