

Rieter India (P) Ltd. vs Addl. Cit on 27 October, 2005

Equivalent citations: (2006)200CTR(DEL)190

ORDER

By the Court In this petition for a writ of mandamus, the petitioner-company has prayed for a direction against the respondents for refund of the amount deposited by it towards tax deducted at source from the salaries of its expatriate employees. The controversy arises in the following circumstance :

The petitioner-company is engaged in the business of providing marketing support, installation and after-sale services of textile machinery manufactured by Rieter group. In order to support the business activities of the latter in India, its parent company appears to have deputed four employees from Switzerland to serve in India. These employees commenced their service in India with the petitioner- company in the year 1995 and in one case in January, 1996.

As per the employment agreements entered into between the petitioner and the aforementioned expatriate employees, the petitioner appears to have deducted the tax payable under the Indian laws from the salaries of the expatriates. The amount so deducted was then deposited by the petitioner-company with the IT authorities from time-to-time. According to the petitioner-company, assessment against the employees have either been completed or the same have become time-barred. No tax liability is as a consequence of the said proceedings outstanding as on date. The petitioner has in that backdrop claimed refund of the amounts deposited by it with the respondents, towards tax deducted at source from the salaries of the expatriate employees.

2. According to the averments made in the writ petition and the documents placed on record, the assessing authority has in some of the cases held a refund due to the expatriate employees. For instance, a refund of Rs. 6,34,137 has, according to the petitioner-company, been held due to Otto Niedermann, one of the expatriates, for the assessment year 1996-97. Similarly, in the case of Andreas Beising, a refund has been allowed for the assessment year 1997-98.

In the case of Mr. Otto Niedermann also a refund for the assessment year 1996-97 has been allowed. A refund has been ordered even in the case of Mr. Andreas Biesing for the assessment years 1996-97 and 1998-99. The petitioner's further case is that refund vouchers were, pursuant to the above refunds, issued by the authorities in favor of the expatriate employees, which were received by the petitioner-company but returned to the authorities with the request that the vouchers should be drawn in favor of the petitioner.

3. The first limb of the petitioner's grievance in the above backdrop is that the authorities have not so far examined and passed any order on the request for the issue of a refund voucher in favor of the

petitioner-company. The second limb of the grievance in the writ petition is that no orders regarding refund have been passed by the authority competent to do so for some of the assessment years in respect of each one of the above employees. The third limb of the grievance is that although the petitioner-company has furnished the requisite documents, including a power of attorney from the employee concerned, the authority concerned has not examined the request for refund and issue of a refund voucher despite lapse of considerable period. A mandamus directing the assessing authority concerned to grant the requisite refund for a total amount of Rs. 36.38 lakhs with interest has, therefore, been prayed for by the petitioner.

4. We have heard the learned counsel for the parties and perused the record.

5. Mr. Syali, learned senior counsel appearing for the petitioner, submitted that the competent authority was sitting over the request for grant of refund made by the petitioner- company without any lawful justification. He urged that the assessing authority ought to have passed orders on the request expeditiously inasmuch as the entitlement of the employee to seek a refund was beyond (doubt) and the authorisation in favor of the company to seek such a refund on behalf of the employee had been satisfactorily demonstrated. He urged that an appropriate direction for an expeditious disposal of the request for refund needs to be issued to prevent avoidable prejudice and financial loss to the company.

6. Mr. Jolly, on the other hand, submitted that the merits of the claim made by the petitioner-company need not be examined by this court in the present proceedings, as the relief claimed by the petitioner was limited to a mandamus for grant of refund which claim has not yet been finally examined and determined by the concerned authority. He urged that the assessing authority concerned could be given time to pass appropriate orders in accordance with law within a reasonable period to be specified by this Court. He submitted that keeping in view the nature of the claims, the assessing authority may be given time till 31-3-2006, to dispose of all the applications made to it by the petitioner.

7. We are not, as submitted by Mr. Jolly, required to examine the question whether refunds are due to the petitioner- company and whether the petitioner-company has satisfied the requirements otherwise stipulated for the grant of such refunds, What is, however, evident from the record is that deposit of tax deducted by the company at source from the salaries of its expatriate employees has been made and is being claimed by way of refund. Our attention has also been drawn to an order passed by the assessing authority granting refund to the expatriate assesseds. It is possible that similar orders have been passed in the case of all other employees for one or more of the assessment years which we need not examine in detail at this stage. All that we need to mention is that before the assessing authority there is a request by the petitioner -company for the grant of refund of the tax deposited by it. That request ought to have been examined by the authority concerned in accordance with law and disposed of expeditiously. The authority concerned does not appear to have done so despite petitioner's repeated applications and reminders, including representations made to the Chief CIT and the CBDT. The disposals of the request for refunds made by the petitioner -company were according to Mr. Jolly delayed on account of restructuring within the department and change of jurisdictions, etc. Be that as it may, it is high time that the authority concerned takes

up the request made by the petitioner- company for refunds on the basis of the material furnished by it and any further material that the assessing authority may need in that regard, and dispose of the same expeditiously. A formal order dealing with the request for refund made by the petitioner-company shall, accordingly, be passed by the competent authority expeditiously, but not later than 31-3-2006. Needless to say that the petitioner shall co-operate with the process of verification and produce any further documents demanded by the authority concerned unless such documents are wholly irrelevant to the question of refund.

8. The writ petition is with the above directions, disposed of. We make it clear that this order shall not be construed as authorising the competent authority to re-examine the issue regarding entitlement of the refund in favor of expatriate employees. This observation shall not, however, prevent the competent authority to re-examine or reopen the matter if otherwise legally permissible.