IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1619 OF 2016

M/s. Aegis Limited,
a Company incorporated under the
Companies Act, 1956, having its
office at Essar House, 11, K.K. Marg,
Mahalaxmi, Mumbai-400 034. .... Petitioner

- Versus -

1. The Union of India
through Secretary,
Ministry of Finance,
North Block, New Delhi.

2. The Central Board of Direct Taxes
through the Secretary,
Department of Revenue,
Ministry of Finance,
Government of India,
Central Secretariat, North Block,
New Delhi-110 001.

3. The Additional Commissioner of
Income Tax 6(1), having his
office at 5th Floor, Aayakar
Bhawan, M.K. Road,
Mumbai-400 020.

4. The Deputy Commissioner of Income
Tax 6(1), having his office at
Aayakar Bhawan, M.K. Road,
Mumbai-400 020. .... Respondents

Mr. Deepak Chopra with Mr. Jas Sanghavi, Ms Manasvini Bajpai and Mr. Aseem Mewar i/by M/s. PDS Legal for the Petitioner.
Mr. Anil C. Singh, Additional Solicitor General, with Mr. A.R. Malhotra, Ms Geetika Gandhi and Ms C.S. Xavier for the Respondents.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

DATE : DECEMBER 01, 2016

ORAL JUDGMENT (Per Shri S.C. DHARMADHIKARI, J.):

1. By these writ petition under Article 226 of the Constitution of India, the petitioner prays for the following reliefs:

> "(a) that this Hon'ble Court be declare that the *provisions of sub-section (1D) of section 143 of the Income Tax Act, 1961 is unconstitutional and hence, liable to be struck down;*
>
> *(b) that this Hon'ble Court be pleased to declare that the impugned Instruction/Circular No.1 of 2015 dated 13.1.2015 issued by the Central Board of Direct Taxes is illegal, void and unsustainable in law and accordingly is liable to be set aside;*
>
> *(c) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari*

> *or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner case and after going into the validity and legality thereof to quash and set aside impugned Instruction/Circular No.1 of 2015 dated 13.1.2015 issued by the Central Board of Direct Taxes;*
>
> *(d) that this Hon'ble Court be pleased to issue a Writ of Prohibition, prohibiting the Respondents by themselves, their servants and agents from in any manner whatsoever giving effect to the Impugned Instruction/Circular No.1/2015 dated 13.01.2015 in a manner that returns are not processed even in deserving cases, where notices under Section 143(2) of the Act have been issued;"*

2. In prayer (e) of the writ petition, without prejudice and as an alternative relief, the petitioner seeks a writ of mandamus or any other appropriate writ, order or direction, ordering and directing the respondents, their subordinate servants, agents and officers to forthwith process and sanction the refund claims with appropriate interest, if any, for the Assessment Year 2014-15.

3. Given the concession of both sides that, this Court need not record any elaborate reasons or set down in detail the arguments, the points for consideration, etc., we take up the

request as made in the alternative and without prejudice. We have noted it, as above.

4. That arises from a peculiar situation inasmuch as is that the petitioner is a Company incorporated under the provisions of the Indian Companies Act, 1956. The respondents to this petition are the Union of India, the Central Board of Direct Taxes, the Additional Commissioner of Income Tax and the Deputy Commissioner of Income Tax.

5. The petitioner claims that it is engaged in providing customer interaction, back office and related services. They are claimed to be in the nature of information technology/enabled services. The petitioner claims to be known as and operates by the name "Aegis Group of Companies". For the Assessment Year 2014-15, the petitioner filed its return of income electronically on 26-11-2014. It declared a total loss of Rs.28,14,68,635/-, including long term capital loss of Rs.26,45,57,970/- while claiming a refund amounting to Rs.19,75,98,310/-. This return was required to be processed, according to the petitioner, in

terms of the second proviso to sub-section (1) of Section 143 of the Income Tax Act, 1961 (for short, "the Act") on or before 31-3-2016. A notice under Section 143(2) of the Act was issued by the fourth respondent on 31-8-2015 since the case of the petitioner was selected under the CASS System.

6. A representation was filed on 30-5-2016 before the third respondent, requesting the processing of the refunds for the Assessment Years 2014-15 and 2015-16 vide a letter, copy of which is at Annexure-C, dated 30-5-2016.

7. A reminder was issued on 8-6-2016.

8. A meeting was also held but the petitioner states that it was informed that, once a notice under Section 143(2) had been issued, the provisions of Section 143(1D) of the Act come into play and in terms of the instruction of the second respondent being Instruction No.1 of 2015, dated 13-1-2015, the returns cannot be processed.

9. It is in these circumstances, the petitioner raised the

above challenge but at the same time placed before the Court its peculiar factual scenario. In para 13, it states as to how the delay in processing the refund applications prejudices it and causes severe financial hardship. In para 14, it states that though the returns for the Assessment Years 2012-13 and 2013-14 were pending for assessment, they were processed despite the fact that provision of Section 143(1D) of the Act was in existence and in force. These returns were processed with the objective to adjust the disputed tax demand for the Assessment Years 2009-10 and 2010-11. However, when it came to issuance of refunds, the respondents are denying them the same in the garb of Section 143(1D) and the CBDT Instruction. This selective approach also prejudices the petitioner.

10. It is in the above factual background and reply of respondent No.4, which proceeds on the footing that the return of income for the Assessment Year 2015-16 was filed electronically on 27-11-2015 declaring a certain loss while claiming a refund of taxes, a notice was issued. A representation for processing of the refund was filed and its pendency being not

disputed, that we called upon both sides to take appropriate instructions.

11. Mr. Chopra, learned counsel appearing for the petitioner, on instructions, submits that if this Court were to direct the processing of the refund application in the peculiar facts and circumstances of the petitioner's case, then, the petitioner would not press the constitutional challenge or the challenge to the Circular of the CBDT.

12. The Additional Solicitor General of India Mr. Anil Singh was appearing on the earlier occasion and we requested him equally to take instructions.

13. After taking instructions, the Additional Solicitor General informs us that while it is true that the representation is pending, so also the refund application, the processing could not be undertaken in the light of the constitutional challenge raised and given the presumption that the provision is constitutional and must be established and proved not to be so. Till then, there

is no question of not giving effect to it. Hence, the respondents have not processed the application. However, he does not dispute the pendency of the representation and the refund application.

14. Once the petitioner gives up the constitutional and the larger challenge and are agreeable that their refund application if processed in accordance with law and expeditiously they would be satisfied and would not press the petition thereafter, we are of the opinion that the following order will serve the ends of justice. While clarifying that this order is passed in the peculiar facts and circumstances of the petitioner's case and shall not be treated as a precedent for any future case and that we have expressed no opinion on the rival contentions, particularly on the larger challenge raised in the writ petition and they are kept open for being considered and decided in an appropriate case, we dispose of this petition in the following terms:-

15. We direct that the refund application of the

petitioner pending with the Department shall be processed by the Competent Authority, namely, respondent No.4, as expeditiously as possible and in accordance with law.

16. We grant two weeks' time for the same. The time to commence from the date of receipt of a copy of this order.

17. We clarify that we have expressed no opinion on the merits of the refund application. This application shall be dealt with in accordance with law.

18. Once we direct disposal of the refund application, needless to clarify that the refund application pertaining to the Assessment Year 2014-15 shall be processed and disposed of in terms of our directions.

19. Rule is made absolute in the above terms. There will be no order as to costs

(B.P. COLABAWALLA, J.) (S.C. DHARMADHIKARI, J.)