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

+ **W.P. (C) 3665/2015**

INDUS TOWERS LIMITED ..... Petitioner

versus

UNION OF INDIA & ORS. .... Respondents

**W.P. (C) 3936/2015**

INDUS TOWERS LIMITED ..... Petitioner

versus

UNION OF INDIA & ORS. .... Respondents

**W.P. (C) 6543/2015**

KSS PETRON PVT. LTD. (ERSTWHILE KAZSTROY  
INFRASTRUCTURE INDIA PRIVATE LIMITED) ..... Petitioner

versus

DEPUTY COMMISSIONER OF INCOME TAX,  
CIRCLE 14 (1), & ORS. .... Respondents

**W.P. (C) 2186/2016**

CBRE SOUTH ASIA PRIVATE LIMITED & ANR. .... Petitioners

versus

DEPUTY COMMISSIONER OF INCOME TAX CIRCLE-5(2),  
NEW DELHI & ORS. .... Respondents

**W.P. (C) 12084/2015, CM APPL.37530 &37624/2016**

NAVNIRMAN HIGHWAY PROJECTS PVT LTD ..... Petitioner

versus

DEPUTY COMMISSIONER OF INCOME TAX ..... Respondent

Appearance: Mr. N. Venkataraman, Sr. Advocate with Mr. Gajendra Maheshwari, Ms. Perna Chopra, Ms. Swati Thapa and Mr. R. Satish Kumar, Advocates for petitioners in item nos.9&10.

Mr. Prakash Kumar with Ms. Mehvish Khan and Mrs. Rashmi Singh, Advocates for petitioners in item nos.11 & 12.

Mr. Shashwat Bajpai with Mr. Sharad Agarwal, Advocate for petitioners in item no.18.

Mr. Sanjeev Narula, CGSC with Ms. Vinita Abhishek Ghai, Advocate for UOI in item no.9

Mr. Kavindra Gill, proxy for Mr. Ajay Digpaul, CGSC for UOI in item no.10.

Ms. Nidhi Parashar, Advocate for Resp-2 in item no.11.

Mr. Ravi Prakash, CGSC with Mr. Aditya Dewan and Ms. Natasha Thakur, Advocates for Resp-2 in item no.12.

Mr. Dileep Shivpuri and Mr. Sanjay Kumar, Advocates for revenue in item nos.9-12.

Mr. Ripu Daman Bhardwaj, CGSC with Mr. Manuj Kaushik and Mr. Sahaj Garg, Advocates for UOI in item no.18.

Mr. Ashok K. Manchanda, Sr. Standing Counsel with Ms. Lakshmi Gurung, Advocates for revenue in item no.18.

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MS. JUSTICE DEEPA SHARMA**

**ORDER**

**06.10.2016**

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The petitioners are aggrieved by the notices issued under Section 143 (2) and 142 (1) which according to them were issued with the sole purpose of preventing them from payment of refund claims pending before the concerned Assessing Officers for various assessment years on account of excess withholding of amounts paid towards estimated tax liability. It is submitted that the withholding on account of Section 143 (1D) which provision was introduced by the Finance Act, 2012, reads as follows: -

*"143(10) Notwithstanding anything contained in sub-section (1), the processing of a return shall not be necessary, where a notice has been issued to the assessee under sub-section (2)"*

The petitioners urged that the provision was sought to be interpreted in the light of Instruction No.1 of the Circular of the CBDT dated 13.01.2015 which *inter alia* advised the income tax authorities that “the processing of the return cannot be undertaken after notice has been issued under Sub Section (2) of Section 143 of the Act.” The Circular also went on to state that such scrutiny assessment should be completed wherever refund claims were made expeditiously. The Circular was the subject matter of the challenge before this Court in *Tata Teleservices Ltd. v. CBDT & Anr.*, (2016) 69 Taxman 226 (Del). The Division Bench which considered the challenge took note of various previous decisions, notably the one in *Keshavji Ravji and Co. v. Commissioner of Income Tax* (1990) 183 ITR 1 (SC) and held that the Circular could not mandate a particular kind of behaviour as the only true interpretation of Section 143 (1D). The relevant discussion in *Tata Teleservices Ltd. (supra)* is as follows: -

*“21. It is sought to be explained by Mr. Ashok K. Manchanda, learned Senior Standing counsel for the Revenue, that what has been issued by the CBDT on 13th January 2015 is only an 'instruction' and not a 'circular' and that the impugned instruction was only for the internal guidance of the officers of the Department.*

*22. The Court finds that it is this very impugned instruction which is being relied upon by the Department to deny refund, where notice has been issued under Section 143(2) of the Act. This is evident from the impugned letter dated 8th September 2015, addressed to the Petitioner. The power of the CBDT to issue such instructions can be traced only to Section 119 of the Act. Therefore, such 'instruction' also has to adhere to the*

*discipline of Section 119 of the Act.*

*23. The real effect of the instruction is to curtail the discretion of the AO by 'preventing' him from processing the return, where notice has been issued to the Assessee under Section 143(2) of the Act. If the legislative intent was that the return would not be processed at all once a notice is issued under Section 143 (2) of the Act, then the legislature ought to have used express language and not the expression "shall not be necessary". By the device of issuing an instruction in purported exercise of its power under Section 119 of the Act, the CBDT cannot proceed to interpret or instruct the income tax department to „prevent“ the issue of refund. In the event that a notice is issued to the Assessee under Section 143 (2) of the Act, it will be a matter the discretion of the concerned AO whether he should process the return.*

*24. Consequently, the Court is of the view that the impugned Instruction No.1 of 2015 dated 13th January 2015 issued by the CBDT is unsustainable in law and it is hereby quashed. It is directed that the said instruction shall not hereafter be relied upon to deny refunds to the Assesseees in whose cases notices might have been issued under Section 143(2) of the Act. The question whether such return should be processed will have to be decided by the AO concerned exercising his discretion in terms of Section 143 (1D) of the Act.”*

The revenue contends that the result of *Tata Teleservices Ltd.* (*supra*) judgment is that the Assessing Officer has the discretion to either process refund claim or await the final decision pursuant to the notice issued under Section 143 (1) or 142 (2) as the case may be. It was submitted that every refund claim is to be considered on the basis of objective material rather than being automatically processed. Counsel also relied upon Section 237 to say that the right to claim

refund in the circumstances where assessments are completed or pending is the one conferred by the statute and that such right can be conditioned or curtailed by other provisions as undoubtedly Section 143 (1D) does.

This Court is of the opinion that the submissions of the revenue vis-a-vis Section 237 is partly correct in the sense that undoubtedly it provides for refund claim to the assessee wherever the circumstances warrant and the assessment completed yields results in excess amounts repayable. At the same time, it is hard to accept the wide proposition that the revenue seeks to place having regard to Section 237. Section 237 in one sense locates the restitutionary principle which is part of the larger right of every citizen. That it is part of the Income Tax Act and, therefore, itself in the taxation universe, does not in any manner undermine the restitutionary principle and the reasonableness inherent in it. In other words, if such provision does not exist then the assessee would still have a right to claim excess amount in law unrestricted in any manner with respect to procedural formalities dictated by the Act.

As far as the submission with respect to the manner in which discretion is to be exercised is concerned, there is nothing in the judgment in *Tata Teleservices Ltd. (supra)* to indicate to the contrary. It goes without saying that however the Assessing Officer has to reasonably construe every refund claim in the light of the objective material available at the time when the refund claim is made, this objective material and the circumstances would include the nature of the business, the pattern of the previous years' income or incomes

given the advance tax payments and other assessments etc. In other words, there cannot be a blind or blatant mandate upon certain rights.

In the light of above discussion, we are of the opinion that there is no need to examine the challenge to the validity of Section 143 (1D).

As a result of the above discussion, the Assessing Officers are directed to examine the refund claims and pass appropriate orders in accordance with this judgment within six weeks from today.

Writ Petitions are allowed to the above extent.

**S. RAVINDRA BHAT, J**

**DEEPA SHARMA, J**

**OCTOBER 06, 2016**  
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