

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

**WRIT PETITION NO. 2685 OF 2017**

Vodafone India Ltd.

.. Petitioner

v/s.

Deputy Commissioner of Income Tax (TDS)  
and Anr.

.. Respondents

Mr. J.D. Mistri, Sr. Counsel, Janak Dwarkadas, Sr. Counsel a/w Ms. Fereshte Sethna, Mrunal Parekh, Adhiraj Malhotra, Sagar Sarin i/b DMD Advocates for the petitioner  
Mr. Suresh Kumar a/w Ms. Samiksha Kanani for the respondent  
Revenue

**CORAM : M.S. SANKLECHA &  
RIYAZ I. CHAGLA J.J.**

**DATED : 12<sup>th</sup> JANUARY, 2018.**

**P.C.**

1. This petition under Article 226 of the Constitution of India challenges an order dated 11th October, 2017 passed by the Deputy Commissioner of Income Tax (TDS) – respondent no.1. By the impugned order, the certificate dated 24<sup>th</sup> May, 2017 issued for lower deduction of tax at 0.39 per cent for the period 22<sup>nd</sup> May, 2017 to 31<sup>st</sup> March, 2018 under Section 197 of the Income Tax Act, 1961 (the Act) is cancelled.

2. This petition was originally filed on 10<sup>th</sup> October, 2017 seeking a writ of prohibition to prohibit the respondent Revenue from proceeding further with Show Cause Notice dated 16<sup>th</sup> and 30<sup>th</sup> August, 2017 proposing to cancel the Certificate dated 24<sup>th</sup> May, 2017. Thereafter, the petition was amended on 14<sup>th</sup> November, 2018 consequent to the passing of the impugned order dated 11<sup>th</sup> October, 2017 cancelling the Certificate dated 24<sup>th</sup> May, 2017. The amendment made consequent to order dated 6<sup>th</sup> November, 2017, contained specific averment in paragraphs 10B and 10D of the petition as under :-

*“10B ..... No opportunity of hearing whatsoever was granted to the petitioner in advance of such purported cancellation of the certificate issued under Section 197”, and*

*“10D On 3<sup>rd</sup> November, 2007, to the utter shock and surprise of the petitioner, without any opportunity of hearing being granted .....”*

3. Mr. Suresh Kumar, learned Counsel for the Revenue stated that the above averment is false and misleading. In support, he invited our attention to the affidavit dated 5<sup>th</sup> December, 2017 of Mr. N. Ashokbabu, Deputy Commissioner of Income Tax (Respondent no.1 herein) to which is annexed an order sheet noting dated 12<sup>th</sup> September, 2017 signed by the representatives of the petitioner as

evidence of having attended the hearing. Thus, he submits that the petition be dismissed on the above account.

4. In response, Mr. Mistri, the learned Senior Counsel appearing for the petitioner invites our attention to the affidavit dated 11<sup>th</sup> December, 2017 of Mr. Rajiv Mahopatra, the Constituted Attorney of the petitioner. In particular, he points out therefrom that on receipt of the notice proposing cancellation of Certificate dated 24<sup>th</sup> May, 2017, the petitioner filed a reply dated 7<sup>th</sup> September, 2017. In its reply, the petitioner made submission both on jurisdiction and on merits. Further, the above reply specifically asked for a hearing to be given first on jurisdiction and only thereafter, if not convinced, to give a further hearing on merits. The affidavit further records that on 11<sup>th</sup> September, 2017, the petitioner's representative did attend the office of respondent no.1 and reiterated the submissions made in the letter dated 7<sup>th</sup> September, 2017. At which time, i.e. on 11<sup>th</sup> September, 2017 as the affidavit in terms records that the petitioner's authorized representative was informed by the respondent no.1 that he will consult with the Additional Commissioner / Commissioner of Income Tax (TDS) and the hearing was inconclusive.

5. Mr. Mistri, further states that in the affidavit dated 8<sup>th</sup> January, 2018 filed by respondent no.1 in response to affidavit dated 11<sup>th</sup> December, 2017, the above facts of inconclusive hearing has not been disputed. In the above context, he submits that even the impugned order dated 11<sup>th</sup> October, 2011 does not record a grant of hearing to the petitioner. It is further submitted that it is more a case of inarticulate / inappropriate drafting and there was never any intent on the part of the petitioner to secure any undue advantage. At the highest, it is submitted that it is a drafting error done by the Advocate for which the petitioner should not be penalized. Mr. Mistri states that an apology is offered by the advocates. At the conclusion of his submission, we informed Mr. Mistri that we are not inclined to entertain this petition. To this Mr. Mistri prayed that the petitioner be allowed to withdraw this petition with liberty to file a fresh petition.

6. It is a settled position in law that any party who approaches this Court seeking a prerogative writ in our extraordinary writ jurisdiction, must come with clean hands. The least that is expected of a petitioner is that he would not misstate and / or misrepresent and / or suppress material facts and / or indulge in *suppressio veri*. The petition should reveal utmost good faith. The petitioner must ensure that every

statement made in petition, which is a sworn statement, is correct and honest. In case, a party breaches the above primary / basic obligation, the writ Court is duty bound to dismiss the petition. This rule is developed to ensure that the process of Court is not abused by dishonest litigants. The examination in this case, would therefore, be whether the ex-facie misstatement and suppression of the hearing having been granted by stating in the petition “no personal hearing whatsoever was granted” was a material suppression i.e. by making such a statement was the petitioner likely to gain therefrom and whether it was a bona fide mistake / inappropriate drafting.

7. In this case, we find besides stating in the petition that no hearing was given, no mention of meeting the respondent no.1 with regard to these proceedings is even mentioned. We are not impressed by the submission on behalf of the petitioner that even the impugned order does not mention grant of any personal hearing to the petitioner. This does not absolve the petitioner from stating all facts fully and truly. Including the fact that a hearing (howsoever inadequate) was given to the petitioner. This fact of hearing being granted is now admitted even by the petitioner after the note sheet is produced. The affidavit dated 11<sup>th</sup> December, 2017 of Mr. Mahopatra on behalf of the petitioner,

however also does not make any attempt to explain the use of the word “No personal hearing whatsoever was granted”. The next thing to be examined is whether the suppression of the fact of hearing being granted is material in the present facts. The impugned order cancels a Certificate dated 24<sup>th</sup> May, 2017 which has a limited life as it expires on 31<sup>st</sup> March, 2018. Therefore, if the above Certificate dated 24<sup>th</sup> May, 2017 is cancelled without hearing then the most likely result in Court would be to set aside the impugned order and restore it for fresh consideration to respondent no.1. This re-adjudication would take some time. Therefore, *ipso facto* the earlier Certificate dated 24<sup>th</sup> May, 2017 resulting in the withholding tax be paid at 0.39% would be revived till fresh orders after hearing is passed under Section 197 of the Act.

8. The learned Counsel for the petitioner states that it was a mistake on their part (advocate) while drafting the petition and the words “whatsoever” was meant to convey that “no effective opportunity of hearing was given”. The plain reading of the above words in the petition seems to suggest by the use of word “whatsoever” that no hearing was ever granted. Needless to state that it is the responsibility of the petitioner to ensure that every material statement of fact stated

in the petition as filed is correct and there is no suppression of material fact relating to the proceedings. The facts are only known to the petitioner and therefore, his obligation to ensure that facts are correctly represented in the petition.

9. The only thing in support of the petitioner is that when the suppression is seen in the context of the fact, it is clear that at no time did the petitioner seek to obtain any ad-interim / interim relief on the basis of above averment without notice to the other side, it could be suggestive of a mistake. We have examined the orders passed from time to time, from the 6<sup>th</sup> November, 2017 onwards, when this petition was first moved and at no time did the petitioner seek any relief without notice to the other side. Therefore, the suppression may have been on account of mistake as it is unlikely to be made deliberately as it would stand exposed on the other side having notice of the same. Admittedly, the petitioner in this case, has always moved the Court after notice to the respondents.

10. In these circumstances, we are not inclined to entertain the petition. In the peculiar facts as recorded hereinabove, we allow the petitioner's prayer to withdraw the petition. However, the liberty as

sought by the petitioner to file a fresh petition cannot, in these facts, be unconditional as according to us the petitioner has not come with clean hands i.e. petition is soiled. It seems most likely in view of the course of the conduct after filing of the petition that the suppression of material fact was a mistake. We would not want a party to suffer on account of what appears to be a mistake. We give the benefit of doubt to the petitioner in this case and would expect the petitioner to be more careful in future. Therefore, the liberty to file a fresh petition is granted on payment of cost of Rs.75,000/- to be paid to “Zonal Account Office, CBDT, Mumbai” as a condition precedent for filing a fresh petition challenging the order dated 11<sup>th</sup> October, 2017 of the respondent no.1.

11. Petition is disposed of as withdrawn with liberty and costs in the above terms.

**(RIYAZ I. CHAGLA, J.)**

**(M.S. SANKLECHA, J.)**