

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

WRIT PETITION NO.894 OF 2019

Tata Communications Limited	...	Petitioner
versus		
Deputy Commissioner of Income Tax, 1(3)(2) and Ors.	...	Respondents

Mr. J.D.Mistry, Senior Advocate with Mr. Hiten Chande I/by Mint and Confreres, for
Petitioner.

Mr. Charanjeet Chandrapal, for Respondents.

**CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.**

DATE: 8th JULY, 2019

P.C.:

1. Heard the Counsel for the parties. The Petitioner has prayed for directions to the Respondents to process income tax return of the Petitioner for the Assessment Year 2015-16 and to grant refund of a sum of Rs.154,47,50,600/- with interest as per statutory provisions.

2. Brief facts are as under :

The Petitioner is a Company registered under the Companies Act, 1956 and is regularly assessed to the tax. The Petitioner had filed return of income for the said assessment year 2015-16 on 20th November, 2015. This return gave rise to refund. The Petitioner filed a revised return on 1st March, 2017 , which also gave rise to refund claim. The Assessment Officer in terms of Section 143(1) of the Income Tax Act

(“the Act” for short) would process the return before 31st March, 2018. The Assessing Officer did not do so, instead issued a notice of scrutiny assessment under Section 143(2) of the Act, on 27th March, 2017.

2. The Petitioner approached the Assessing Officer and higher authorities repeatedly requesting that the Petitioner’s return in question be processed under Section 143(1) of the Act and refund flowing from such return, subject to limited adjustments envisaged under the said provision, be released, notwithstanding the fact that the Assessing Officer has issued notice under Section 143(2) of the Act. Since the Respondent did not do so, the present Petition came to be filed.

3. Appearing for the Petitioner learned Counsel Shri Mistry took us through the provisions contained in the said Act, in particular Sections 143(1), 143(2), 143(1D) and 241A, which was inserted by Finance Act, 2017 with effect from 1st April, 2017 and is made applicable to the assessment years commencing on or after 1st April, 2017. On the basis of these statutory provisions and decisions of this Court and other High Courts, Counsel submitted that the Assessing Officer was duty bound to process the return of income of the Petitioner and grant refund arising from such return, even though subsequently he had issued notice of scrutiny assessment.

4. On the other hand, learned Counsel Shri Chandrapal relied on the Affidavit filed by the Department opposing the Petition.

5. In the present case, it is not necessary to refer to the statutory scheme in

detail since this Court and other High Courts have already taken note of such provisions and given conclusive opinion thereon. Before referring to such judgments, we may briefly note the stand of the Department taken in the undated Affidavit-in-Reply filed by one Shri Rahul Singhanian, Dy. Commissioner of Income Tax, Mumbai. In such Affidavit, a reference is made to the provisions of Section 143(1D) of the Act and the fact that the Assessing Officer has issued notice under Section 143(2) of the Act. After referring to these provisions, it is stated that the Petitioner was informed that the refund cannot be issued in view of Section 143(1D) of the Act, since notice under Section 143(2) of the Act is already issued. A reference is also made to a draft assessment order for the year under consideration, which if ultimately finalized would give rise to a tax demand from the Petitioner instead of department paying refund.

6. As we would notice, as per different decisions of this Court and other High Courts, none of these grounds will be sufficient to enable the Respondents to withhold the refund arising out of the said return for the assessment year 2015-16. This Court in the case of Group M. Media India (P) Ltd. V/s. Union of India¹ in the context of the provisions contained in Section 143(1D) and 143(1) of the Act, had observed as under :

“8. Before us, Mr. Mohanty does not dispute the fact that in view of the Delhi High Court decision in Tata Teleservices Ltd. (Supra) Instruction No.1 of 2015 dated 13th January, 2015 of the CBDT would not fetter the Assessing Officer in any manner from exercising his discretion to process

1 [2017] 77 taxmann.com 106 (Bombay)

the return of income under Section 143(1) of the Act and considering the grant of refund under Section 143(1D) of the Act. The Petitioner before the Delhi High Court was not granted refund, pending scrutiny assessment in view of Instruction No.1/2015 dated 13th January, 2015. The Delhi High Court held that the instruction issued is without jurisdiction. This for the reason that although Section 119 of the Act does empower the CBDT to issue instructions for the proper administration of the Act, this power is hedged in by limitations as provided in the proviso to Sections 119(1) and also 119(2) of the Act, i.e. the CBDT cannot direct an Assessing Officer to dispose of a case in a particular manner nor can the instructions be prejudicial to the assessee. Therefore, the circulars/orders /instructions issued by the CBDT under Section 119 of the Act would be binding upon the Revenue only to the extent they are beneficial to the assessee. Such instructions, if not beneficial to the assessee, cannot prevail over the Act. In the above view, the Delhi High Court held that Instruction No.1 of 2015 dated 13th January, 2015 issued by the CBDT is unsustainable in law and therefore, set it aside. It must also be pointed out that the Revenue is not disputing the decision of the Delhi High Court in in Tata Teleservices Ltd. (Supra) either on facts or in law. Therefore, in view of the decision of this Court in Smt. Godavaridevi Saraf (Supra), the officers implementing the Act are bound by the decision of the Delhi High Court and Instruction No.1 of 2015 dated 13th January, 2015 has ceased to exist. Therefore, no reference to the above Instruction can be made by the Assessing Officer while disposing of the Petitioner's application in processing its return under Section 143(1) of the Act and consequent refund, if any, under Section 143(1D) of the Act. Needless to state that the Assessing Officer would independently

apply his mind and take a decision in terms of Section 143(1D) of the Act whether or not to grant a refund in the facts and circumstances of the Petitioner's case for A.Y. 2015-16.”

7. Subsequently, in the case of Tata Projects Limited V/s. Deputy Commissioner of Income Tax, Range-2(3)(2)², the Division Bench of this Court made a reference to a case of Group M Media India (Supra) and observed as under :

“20. In the facts of the case, the averments made in the first two petitions (of Tata Projects Ltd.) and annexures to the petitions show that after the returns were transferred to the AO much before notices were issued under sub-section (2) of Section 143, the Petitioner made repeated representations to the AO to process the returns and number of visits were made by the officers of the Petitioners. Perhaps, the AO was under an impression that he can wait till the last date provided for processing of the returns. If we peruse the affidavit of Mr. Madhukar AVES, Assistant Commissioner of Income Tax-2(3)(1), Mumbai, filed in Writ Petition No.2051 of 2017 and in particular paragraph 9, it is very clear that he is under an impression that as the last date for completing scrutiny assessment for the year 2015-16, is 31st December, 2017, he can wait till 31st December, 2017 for completing the scrutiny assessment. This approach which is reflected from the said affidavit, has to be deprecated. Secondly, he has completely ignored that such return has to be processed as there was no discretion exercised after service of notice under sub-Section (2) of Section 143.”

² [2017] 88 taxmann.com 325 (Bombay)

8. Gujarat High Court in the case of Corrtech International (P) Ltd. V/s. Deputy Commissioner of Income Tax³ was also confronted with some what similar situation. It was noticed that Section 241A was inserted in the Act by the Finance Act, 2017 and was made applicable to the assessment years 2017-18 and onwards. It was also a case in which the Assessing Officer had issued notice under Section 143(2) of the Act and the assessee was clamoring for processing of the return under Section 143(1) and refund arising out of such return. The Court noted the decision of this Court in the case of Group M. Media India (Supra) and the decision of the Delhi High Court in the case of Tata Teleservices Ltd. V/s. Central Board of Direct Taxes⁴ and observed as under :

“15. A combined reading of the said provisions and in particular, sub-section (1D) of Section 143 would demonstrate that once a notice under sub-section (2) of section 143 is issued, it would be discretionary for the Assessing Officer to process the return under Section 143(1). The time limit envisaged in the further proviso to sub-section (1) would not apply but that the same can be done only before issuance of the order of assessment under sub-section (3).”

16. Under such provision, therefore, it would be open for the Assessing Officer to process the return under Section 143(1) and, if the culmination of such exercise is to deny a refund to the assessee, send such an intimation, as provided, under the proviso to sub Section (1). Once however, the time frame envisaged in the further proviso to sub-section (1) expires and is not extended by virtue of the operation of sub-section (1D) of

3 401 ITR 355 (Gujarat)

4 [2016] 386 ITR 301

Section 143, there would be no scope thereafter for the Assessing Officer to withhold the refund arising out of the return filed by the assessee.

17. This position would become clear if we compare the provisions of Section 143(1D) as amended by the Finance Act, 2017 read with newly inserted Section 241A. Under the new sub-section (1D) the legislature provides that notwithstanding anything contained in sub-section (1) the processing of return would not be necessary where a notice has been issued to an assessee under sub-section (2). This would make it clear that once notice under Section 143(2) has been issued, the Assessing officer shall not process the return under Section 143(1). The original proviso to sub-section (1D) has been substituted by a new proviso under which it is clarified that the proviso under said sub-section shall not apply to any return furnished for the assessment year commencing on or after 01.04.2017. Section 241A which was inserted simultaneously, now enables the Assessing Officer to withhold the refund in favour of the assessee which becomes due in terms of sub-section (1) of Section 143 if he is of the opinion that having regard to the fact that a notice has been issued under sub-section (2) of Section 143 that the grant of refund is likely to adversely affect the Revenue, he would, however, do so by recording reasons in writing and with previous approval of the Principal Commissioner or Commissioner and withhold such refund till the date the assessment is made. We may recall that Section 241 which was omitted w.e.f. 01.06.2001 previously enable the Assessing Officer to withhold the refund which becomes due and payable in terms of sub-Section (1) of Section 143 under certain circumstances including in a situation where a notice has been issued or is likely to be issued under sub-section (2) of section 143 of the Act and the Assessing Officer is of the opinion that the grant of refund

is likely to adversely affect the Revenue.

21. Coming back to the facts on hand, so far as the assessment of the year 2015-16 is concerned, the return was filed on 29.09.2015 for which, the time limit under the normal provision of sub-section (1) of Section 143 of the Act, for processing the return is over long back. Even though as discussed earlier, the Assessing officer having issued notice under sub-section (2) of Section 143 of the Act, he would get an extended time for proceeding under sub-section (1) as highlighted by the Delhi High Court in case of Tata Teleservices Ltd. (Supra) and by the Bombay High Court in the case of Group M Media India (P) Ltd. (Supra), it would be wholly inequitable for the Assessing Officer to merely sit over the Petitioner's request for refund citing the availability of time upto the last date of framing the assessment under sub-section (3) of Section 143. At lease once the time limit envisaged in the proviso to sub-section (1) of Section 143 is over without the Assessing Officer processing the return under sub-section (1) and even though notice under sub-section (2) of Section 143 may have been issued, the Assessing Officer, by all reasonable interpretation of the statutory provisions would be expected to respond to the assessee's request for either granting refund or indicating that in terms of the adjustments impermissible under sub-section (1) of section 143, such refund or part thereof was not available to the assessee. We simply cannot accept the the interpretation of the counsel for the Revenue that once a notice under sub-section (2) of Section 143 is issued, the suspension of the refund arising out of the return filed by the assessee would be automatic and till the passing of the order of assessment under sub-section (3) of Section 143. The reasonable interpretation of the statute and the situation in such a case would be, to expect the Assessing Officer to take up an expeditious disposal

of the processing of return under sub-section (1) of Section 143 of the Act at least once the assessee requests for release of the refund and send as an intimation to the assessee if he wishes to withhold the same.”

9. As per the settled law, the Respondents cannot avoid processing the return under Section 143(1) of the Act and granting refund to the Petitioner if due as per such return. The Respondents have not cited justifiable reasons why such refund cannot be released.

10. In view thereof, the Respondents are directed to process the return under Section 143(1) of the Act and release refund if due, with statutory interest as payable within one month from the date of receipt of copy of this order.

11. The Writ Petition is disposed of.

(S.J.KATHAWALLA, J.)

(AKIL KURESHI, J.)