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

WRIT PETITION NO. 1845 OF 2019

Tata Communications Limited … Petitioner

V/s.

Deputy Commissioner of
Income Tax – 1(3)(2) and Ors. .. Respondents.

Mr. J.D. Mistri, Senior Advocate i/b. Mint and Conferers the Petitioner.

Mr. Suresh Kumar for the Respondent Nos. 1 to 4.

CORAM : M.S. SANKLECHA &
NITIN JAMDAR, JJ.

DATE : 16 SEPTEMBER 2019.

***P.C.* :-**

Mr. Mistri, learned Senior Advocate seeks leave to amend the Petition so as to annex the communication dated 18 July 2019 addressed by the office of the Respondent No.3 to the Assessing Officer – Respondent No.1 with a copy to the Petitioner and also challenge the same to the extent it seeks to withhold refund consequent to the revised return of income dated 27 March 2019. Leave as sought is granted. Amendment to be carried out forthwith.

Re-verification is dispensed with. Amendment to be carried out on the Respondent copy immediately.

2. This Petition under Article 226 of the Constitution of India seeks :

(a) direction to the Respondent – No.1 Deputy Commissioner of Income Tax to process the Petitioner's revised return filed on 27 March 2019 for the Assessment Year 2017-18 under Section 143(1) of the Income Tax Act, 1961 (the Act) and grant the consequent refund of Rs. 72.16 crores alongwith interest thereon;

(b) quashing of the notice dated 14 November 2018 issued by the office of the Principal Commissioner of Income Tax – Respondent No.3 seeking to withhold the refund due to the Petitioner under Section 241A of the Act for Assessment Year 2017-18 in respect of the original return of income filed on 30 March 2017 by the Petitioner; and

(c) quashing of the communication dated 18 July 2019 addressed by the office of Respondent No.3 seeking to withhold refund due to the Petitioner under Section 241A of the Act for Assessment Year 2017-18 in respect of the revised return of income filed on 27 March 2019 by the Petitioner.

3. On 30 November 2017, the Petitioner filed its return of Income for Assessment Year 2017-18 declaring a total income of Rs.227/- crores and seeking refund of Rs.92.83 crores. This refund was due to the Petitioner on the return being processed under Section 143(1) of the Act. In spite of Petitioner's requests/reminders to the Respondent No.1 - Assessing Officer. The same was not processed.

4. Despite not having processed the return of income under Section 143(1) of the Act, on 14 November 2018 a notice was issued by the office of Respondent No.3 – Principal Commissioner of Income Tax. The above impugned notice was for hearing the Petitioner on the proposed action of Respondent No.3 to withhold the refund relatable to Assessment Year 2017-18 in view of Section 241A of the Act.

5. The Petitioner protested by various representations to the Respondents that Section 241A of the Act could only be invoked, after the refund due is determined under Section 143(1) of

the Act. However, that till date no order has yet been passed by the Respondents on the impugned notice dated 14 March 2018.

6. On 27 March 2019 the Petitioner filed a revised return of income for the Assessment Year 2017-18. It revised its income to Rs.233 crores and sought a refund of Rs.72.16 crores. This revision of income was on account of retrospective amendment to Section 43AA of the Act and certain other claims.

7. This revised return of income filed on 27 March 2019, has not yet been processed under Section 143(1) of the Act. This inspite of numerous representations on behalf of the Petitioner. Thus leading to the filing of this Petition.

8. The Respondent No.1 – the Assessing Officer has filed an affidavit in reply dated 5 August 2019 to this Petition. In its reply it is stated that on the filing of the revised return of income on 27 March 2019, the original return of income filed on 30 November 2017 stands abandoned, thus, the Revenue would now only deal with the revised return of income filed on 27 March 2019 for the subject Assessment Year 2017-18. The affidavit in reply further annexes a copy of the communication dated 18 July 2019 addressed by the Principal Commissioner of Income Tax – Respondent No.3 to the Assessing Officer to withhold the refund due for Assessment Year 2017-18 under Section 241A of the Act.

9. Before dealing with the issue arising in this case, it would be necessary to reproduce Section 241A of the Act, introduced w.e.f. 1 April 2017. It reads as under :-

> *"241A. Withholding of refund in certain cases.—For every assessment year commencing on or after the 1st day of April, 2017, where refund of any amount becomes due to the assessee under the provisions of sub-section (1) of section 143 and the Assessing Officer is of the opinion, having regard to the fact that a notice has been issued under sub-section (2) of section 143 in respect of such return, that the grant of the refund is likely to adversely affect the revenue, he may, for reasons to be recorded in writing and with the previous approval of the Principal Commissioner or Commissioner, as the case may be, withhold the refund up to the date on which the assessment is made.".*

Section 241A of the Act empowers the Assessing Officer to withhold the refund which has become due for reasons stated therein, this only after determining the refund due under Section 143(1) of the Act. It is an undisputed position before us that neither the regular return of income dated 30 November 2017 nor the revised return of income dated 27 March 2019 for the subject Assessment Year has been processed under Section 143(1) of the Act till date. Consequently, the occasion to withhold any refund under Section 241A of the Act at this stage does not arise. Therefore, on the admitted facts the application/invocation of Section 241A of the Act is premature.

10. In view of the admitted position that neither the original or the revised return of income for the Assessment Year 2017-18 has been processed under Section 143(1) of the Act, invoking of Section 241A of the Act would be without authority of law. Thus, the impugned show cause notice dated 14 November 2018 is quashed and set aside not only on the above ground but also as the affidavit in reply states that the original return of income stands abandoned, on filing of revised return of income. The impugned notice is in pursuance of the original return of income filed on 30 November 20917. Similarly, the communication dated 18 July 2019 addressed by the Office of Respondent No.3 – Principal Commissioner of Income Tax to the Deputy Commissioner of Income Tax - Assessing Officer approving to the proposal to withhold the refund due for the Assessment Year 2017-18 under Section 143(1) of the Act is also without jurisdiction. This as the refund due has admittedly not been determined under Section 143(1) of the Act. Therefore, quashed and set aside.

11. Mr. Suresh Kumar, learned Counsel appearing for the Respondent – Revenue on instructions of Mr. Rahul Singhania – Respondent No.1 – Assessing Officer states that the revised return of income filed on 27 March 2019 would be processed under Section 143(1) of the Act within a period of eight weeks from today. The statement is accepted.

12. The Petition is disposed of in the above terms. No order as to costs.

NITIN JAMDAR, J. **M. S. SANKLECHA, J .**