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

WRIT PETITION NO.3501 OF 2018

Atul Projects India Private Limited … Petitioner

V/s.

Union of India and anr. … Respondents

Mr.Naresh Jain with Ms.Neha Anchliya i/by M/s Agrud Partners for the Petitioner.
Mr.N.C.Mohanty for Respondent No.2.

CORAM : AKIL KURESHI AND
M.S.SANKLECHA, JJ.
DATE : JANUARY 24, 2019.

P.C.:-

1. Petitioner has challenged a notice dated 10th August, 2018 under Section 143(2) of the Income Tax Act ("the Act" for short) issued by the Respondent No.2-Assessing Commissioner of Income Tax, the Assessing Officer of the Petitioner as being time barred. This challenge arises in following background.

2. The petitioner is a company registered under the Companies

Act. For the assessment year 2016-17, the petitioner filed its return of income on 17th October, 2016 declaring total income of Rs.22.15 crores (rounded off). On 28th August, 2017 the Assessing Officer issued a notice under Section 139(9) of the Act to the petitioner requesting the petitioner-company to rectify certain defects in filing of the return. The notice granted statutory period of 15 days to take such steps. On 12th September, 2017 i.e. within the time permitted the petitioner removed the defects. According to the petitioner, the defects were technical in nature and did not result into any change in petitioner's total income. In other words, according to the petitioner the initial return filed was at best a defective, but not invalid return.

3. Yet another notice was issued by the department on 19th September, 2017 under Section 139(9) of the Act conveying that the return filed on 12th September, 2017 in response the directions for removing the defects was also considered to be defective. On 29th September, 2017, the petitioner electronically represented to the department that there was no defect in such return.

4. There was no response from the respondents to this communication of the petitioner, nevertheless it appears that the department proceeds on the basis that such representation was proper and that there was no further need to remove any defects as communicated under letter dated 19th September, 2017. On 10th February, 2018, the Assessing Officer processed the petitioner's return under Section 143(1) of the Act, which was duly communicated to the petitioner.

5. On 10th August, 2018, the Assessing Officer issued a notice to the petitioner under Section 143(2) of the Act, conveying to the petitioner that the return in question is taken in scrutiny. The petitioner has challenged such notice on the ground that the same was barred by the limitation. The petitioner points out that such notice of scrutiny had to be issued within 6 months from the end of the financial year during which the original return was filed. According to the petitioner, therefore, the last date for issuing such notice was 30th September, 2017. The department however contends that the relevant date of filing of the return would be the date on which the petitioner in response

to the defects pointed out by the department filed revised return curing the defects in the original return. Thus considered, the department would point out that the notice issued by the Assessing Officer on 10th August, 2018 was valid.

6. It is undisputed between the parties that if the date of the filing of the return by the petitioner is considered to be 17th October, 2016 i.e. the date on which the original return was filed, the impugned notice of scrutiny assessment is barred by limitation. It is equally undisputed that if the date of filing of the return is reckoned as 12th September, 2017 i.e the date on which the petitioner removed the defects as pointed out by the department, such notice would fall within the period of limitation prescribed under the Act. Under the circumstances, the sole question that we need to answer is, which of the two of the above noted dates can be stated to the date on which the petitioner filed its return of income. To summarize the relevant facts, the petitioner filed the return of income on 17th October, 2016. This return was found to be defective. Department called upon petitioner to remove such defects which was done on 12th

September, 2017. Though at one stage the department had some doubt about the curing of defects, on a representation of the petitioner it did not raise this issue further and thus impliedly accepted the petitioner's representation that there were no further defects after the petitioner removed the defects on 12th September, 2017.

7. The issue arising in the present petition is no longer res-integra. A division bench of this Court in case of **Prime Securities Limited Vs. Varinder Mehta, Assistant Commissioner of Income-Tax**[1] had held that once the defects are removed within the time permitted by the department, the same would relate back to the original date of filing of the return. The observations of the Court can be noted as under :

> "11. In the instant case, when the petitioner filed its return for the previous year 1990-91 the petitioner was a fully owned subsidiary of Great Eastern Shipping Company Ltd. The petitioner ceased to be fully owned subsidiary only after March, 1992. The defect in signature was removed on 15-10- 1992 but in respect of the same assessment year 1991-92. In our opinion, the subsequent event cannot result in holding that the return as originally filed was not in

1 (2009) 317 ITR 27 (Bom)

> substance and effect in conformity with or according to the intent or purpose of the Act on the date the return was filed. The test to be applied is whether on the date the original return was filed was the return in conformity with or according to the purpose of the Act. On the date the return was filed the petitioner was admittedly a wholly owned subsidiary of Great Eastern Shipping. It is true that the return was invalid as originally filed because of a defect in the person signing the returns. But by virtue of Section 139(9) that defect could be cured and was in fact cured. Though the defect was cured on 15-10-1992 it would relate back to 31-12-1991 the date of original filing of the return. Once the return is valid and in conformity with the intended purpose of the Act, in our opinion, therefore, on this count also, the petition will have to be allowed. "

8. As rightly pointed out by the counsel for the revenue, the case before the Bombay High Court in case of **Prime Securities Limited (supra)** arose in somewhat different background namely in the context of the assessee claiming a benefit under Section 47(5) of the Act. Nevertheless, the observations of the Court noted above and which can be seen as the ratio of the decision, would be applicable in the present case on all fours. In the said case, the Court held that in case of filing of a defective return by the assessee (which may not be confused with filing of the

invalid return) upon such defects being removed within the time permitted, such action of removal of defect would relate back to the filing of the original return. Under the circumstances, the date of the filing of the return would be the date on which it was initially presented and not the date on which the defects were removed.

9. Such a question had arisen before the Punjab and Haryana High Court in case of **Commissioner of Income-tax Vs. Sohan Lal Chhajan Mal**[1]. The facts in the said case were very similar. It was also a case in which the department relied on the date of removal of the defects in the return initially filed defectively, to contend that the notice of scrutiny assessment was issued within the permissible time. The Court held that upon removal of the defects the same would relate back to the filing of the return and therefore, the notice of assessment was hit by limitation. We are informed that SLP against the said judgment of Punjab and Haryana High Court in case of **Sohan Lal Chhajan Mal (supra)** has been dismissed.

1 (2008) 307 ITR 53 (Punjab & Haryana)

10. In the result, impugned notice dated 10th August, 2018 is set aside. Petition disposed of accordingly.

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

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