

M/s. Group M. Media India Pvt. Ltd., Mumbai - Petitioner @HASH The Union of India and Others

Court: BOMBAY HIGH COURT

Date of Decision: Oct. 15, 2016

Acts Referred: Constitution of India, 1950 - Article 226

Income Tax Act, 1961 - Section 119, Section 143(1), Section 143(1D), Section 143(2), Section 237

Citation: (2016) 289 CurTR 622 : (2016) 388 ITR 594

Hon'ble Judges: M.S. Sanklecha and S.C. Gupte, JJ.

Bench: Division Bench

Advocate: Mr. R.V. Easwar, Senior Counsel a/w Mr. Harsh Kapadia i/b Paras Savla, Advocates, for the Petitioner; Mr. N.C. Mohanty, Advocate, for the Respondents

Final Decision: Allowed

Judgement

M.S. Sanklecha, J.(Oral) - By consent of the parties, petition is taken up for final disposal at the stage of admission.

2. This petition under Article 226 of the Constitution of India challenges the inaction/failure on the part of the Assessing Officer in processing the

return of income under Section 143(1) of the Income Tax Act, 1961 (the Act) and granting refund consequent thereto in accordance with Section

143 (1D) of the Act. This petition relates to Assessment Year 2015-16.

3. Briefly, the facts leading to this petition are as under :-

(a) On 29th November, 2015, the petitioner filed its return of income for the Assessment Year 2015-16 under Section 139 of the Act. In its

return, the petitioner declared an income of Rs. 144.48 crores and claimed a refund of Rs. 27.24 crores.

(b) On 12th April, 2016, the Assessing Officer issued a notice under Section 143(2) of the Act to the petitioner relating to the subject assessment

year.

(c) On 27th April, 2016, the petitioner requested the Assessing Officer to process its return of income for the subject Assessment Year in terms of

Section 143(1) of the Act and grant the consequent refund due. The petitioner had annexed Form 30 claiming a refund of Rs. 27.24 crores to the

above communication.

(d) In the absence of any positive response, the petitioner filed further representations dated 1st June, 2016 inter alia requesting the Assessing

Officer to process the return of income under Section 143(1) and grant a consequent refund. This also failed to elicit any response from the

Assessing Officer.

(e) Thereafter, the petitioner met the Assessing Officer on 6th June, 2016 for expediting the process of the refund claim. At that time, the petitioner

was informed of Central Board of Direct Taxes (CBDT) Instruction No. 1 of 2015, which seemed to fetter the exercise of his discretion under

Section 143(1D) of the Act. The petitioner by its letter dated 6th and 24th June, 2016 inter alia pointed out to the Assessing Officer that the Delhi

High Court, in an order dated 11th May, 2016, had quashed Instruction No. 1 of 2015 in the case of Tata Teleservices Ltd. v. Central Board

of Direct Taxes and anr. W.P. (C) No. 12304/2015 and CM 32604/2015.

(f) Thereafter, on 12th August, 2016, the petitioner made a further representation to the Assessing Officer as well as to the Principal Commissioner

of Income Tax, City-12, inter alia seeking the processing of its return in terms of Section 143(1) of the Act and consequent refund in respect of its

return filed for A.Y. 2015-16.

4. The Assessing Officer yet did not respond to the petitioner's demand for refunds. Thus, the present petition seeking a mandamus to the

Assessing Officer to process the return of income under Section 143(1) of the Act and consequent refund, if due, is filed.

5. The respondent Revenue has responded to the petition by filing an affidavit-in-reply dated 7th September, 2016 of Mr. Rishi Kumar, Assistant

Commissioner of Income Tax. In the affidavit-in-reply, it is pointed out that the reason for not processing the petitioner's return of income under

Section 143(1) of the Act and considering the refund due consequent thereto under Section 143(1D) of the Act was CBDT Instruction No. 1 of

2015 dated 13th January, 2015. In this case, notice under Section 143(2) of the Act has been issued on 12th April, 2016. Therefore, in terms of

the above Instruction, the return of income cannot be processed. In support, reliance is placed by the Revenue on the following paragraphs in

Instruction No. 1 of 2015 dated 13th January, 2015:-

4. Considering the unambiguous language of the relevant provision and the intention of law as discussed above, the Central Board of Direct

Taxes, in exercise of the powers conferred on it under Section 119 of the Act hereby clarifies that the processing of a return cannot be undertaken

after notice had been issued under sub-section (2) of section 143 of the Act. It shall, however, be desirable that scrutiny assessments in such cases

are completed expeditiously.

5. This may be brought to the notice of all concerned for strict compliances.

6. Mr. Easwar, learned Senior Counsel appearing for the petitioner points out that Instruction No. 1 of 2015 dated 13th January, 2015 issued by

the CBDT had been quashed by the Hon'ble Delhi High Court in Tata Tele services Ltd. (supra). Therefore, the Assessing Officer cannot now

place reliance upon it to disregard the statutory duty cast upon him in terms of Section 143(1) and 143(1D) of the Act. Further attention was

drawn to the decisions of this Court in Commissioner of Income Tax v. Smt. Godavaridevi Saraf, 113 ITR 589 and Commissioner of

Income Tax v. Valson Dyeing Bleaching and Printing Works, 259 ELT 33 wherein it is held that where a provision of law was declared

ultra virus by the competent Court then the same will be binding on all Authorities administering the Act all over the Country. This so long as there

is no contrary decision on that point. The Assessing Officer is, therefore, obliged to ignore Instruction No. 1 of 2015 dated 13th January, 2015

and decide the petitioner's application to process the refund under Section 143(1) of the Act and consider the applicability of sub-section 1(D) of

Section 143 of the Act to the facts of the present case for the purpose of grant of refund.

7. Mr. Mohanty, learned Counsel appearing for the respondent Revenue does not dispute that the decision of the Delhi High Court is the only

decision on the issue of validity of instruction No. 1 of 2015 dated 13th January, 2015 and based on this decision, the Assessing Officer would be

required to act independent of the above instruction. However, he contends that the Assessing Officer has time to process the petitioner's return of

income in terms of Section 143(1) of the Act till 31st March, 2017. Thus, it is submitted that no mandamus can be issued before 31st March,

2017 directing the Assessing Officer to process the return of income under Section 143(1) of the Act.

8. Before us, Mr. Mohanty does not dispute the fact that in view of the Delhi High Court decision in Tata Tele services 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 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

Tata Tele services Ltd. (supra) either on facts or in law. Therefore, in view of the decision of this Court in 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.

9. The only contention on behalf of the Revenue to oppose the petition is that as the Assessing Officer has time available to process the refund till

31st March, 2017, no mandamus can be issued till 31st March, 2015. We repeatedly asked of Mr. Mohanty, the learned Counsel for the

Revenue, if there was any reason why the return could not be processed before 31st March, 2017. No reasons are forthcoming from the Revenue

as to why the Assessing Officer will not able to dispose of the application for refund or process the return under Section 143(1) of the Act before

31st March, 2017. This conduct/stand of the Assessing Officer, to say the least, is most disturbing in the context of the fact that the petitioners

have been seeking refund since April, 2016. First, he does not deem it proper to inform the petitioner in writing why he cannot deal with the

application and after the petitioner moves the Court, the stand taken is that no direction can be given to him till 31st March, 2017 which is the last

date to process the return under Section 143(1) of the Act. This attitude on the part of the Assessing Officer is preposterous.

10. The action of the officer on the ground urged seems to be in complete variance with the higher echelons of administration of the tax

administration being an assessee friendly regime. In fact, the CBDT has itself issued Instruction No. 7/2012, dated 1st August, 2002 wherein they

have specifically directed the officers of the Revenue to process all returns in which refunds are payable expeditiously. Similarly, as late as in 2014

in the Citizen's Charter issued by the Income Tax Department in its vision statement states that the Department aspires to issue refunds along with

interest under Section 143(1) of the Act within 6 months from date of electronically filing the returns. In this case, the return was filed on 29th

November, 2015, yet there is no reason why the Assessing Officer has not processed the refund and taken a decision to grant or not grant a

refund under Section 143(1D) of the Act. This attitude on the part of the Assessing Officer leaves us with a feeling (not based on any evidence)

that the Officers of the Revenue seem to believe that it is not enough for the assessee to please the deity (Income Tax Act) but the assessee must

also please the priest (Income Tax Officer) before getting what is due to him under the Act. The officers of the State must ensure that their conduct

does not give rise to the above feeling even remotely.

11. Lastly, we must for the benefit of the Revenue reiterate that our powers under Article 226 of the Constitution are very wide for the purpose of

doing justice. The powers of a Court under Article 226 of the Constitution of India are not limited only to prerogative writs but also to issue any

direction or order for doing justice. Therefore, Article 226(1) of the Constitution empowers the Court to issue directions, orders or writs, including

writs in the nature of habeas corpus, mandamus, certiorari or any of them. Therefore, in view of the conduct of the Assessing Officer, we are

compelled to direct the Assessing Officer to consider and process the petitioner's representation dated 12th August, 2016 and dispose of the

same as expeditiously as possible within a period of 8 weeks from today.

12. The Petition is allowed in above terms. No order as to costs.