

## **Granting less than 24 hours to reply to show-cause notice is a flaw in decision making process; assessment quashed**

**Summary – The High Court of Bombay in a recent case of Vodafone India Ltd., (the Assessee) held that allowing assessee less than 24 hours to respond to show cause notice calling upon assessee to show cause as to why claim for deduction under section 80-IA shouldn't be disallowed particularly when there is no fear of the assessment getting time barred in the near future is a flaw in the decision making process and therefore amenable to judicial review.**

### **Facts**

- AO issued show cause notice (SCN) on 27-11-2013 calling upon assessee-petitioner calling on him to show cause why deduction u/s 80-IA shouldn't be disallowed.
- SCN allowed assessee time till 3.30 PM on 28-11-2013 (less than 24 hours) to make representations against proposed action of disallowance.
- AO passed assessment order on 29-11-2013 making disallowance.
- Assessee filed writ petition under article 226 to the Bombay HC making out a grievance of not being allowed reasonable opportunity to make representations and not being given personal hearing and asked for quashing of assessment.
- Revenue opposed petition on the grounds that alternate remedy of appeal to CIT(A) available to assessee.

### **Held**

- Non-exercise of HC's writ jurisdiction in case of availability of an alternative remedy is a self imposed restriction based upon convenience and discretion rather than a rule of law.
- In appropriate cases where there is a serious flaw in the decision making process or prejudice is caused to a party on account of breach of natural justice, HC is enjoined upon to exercise its writ jurisdiction.
- Therefore the availability of an alternative remedy would not by itself bar the exercise of HC's writ jurisdiction, if the facts of the case so deserve.
- The petitioner was given less than 24 hours to respond to the show cause notice i.e. before 3.30 p.m. on 28 November 2013.
- Once the Assessing Officer has called upon the petitioner to show cause why its claim for deduction under Section 80-IA of the Act should not be disallowed, then a reasonable opportunity of filing its reply should be made available to the noticee of the show cause notice i.e. petitioner.
- In this case, less than 24 hours period is granted to the petitioner to respond to the notice, particularly when there is no fear of the assessment getting time barred in the near future.

- In such circumstances, it is incumbent upon the notice issuing authority to grant reasonable opportunity to the petitioner to respond to the notice.
- Impugned assessment order dated 29-11-2013 quashed and set aside and assessment remanded to AO to pass fresh assessment order.