

Refund couldn't be denied just because scrutiny notice was served; HC quashed CBDT's instruction

Summary – The High Court of Delhi in a recent case of Tata Teleservices Ltd., (the Assessee) held that By device of issuing an instruction in purported exercise of its power under section 119, CBDT cannot proceed to interpret or instruct income tax department to prevent issue of refund; Instruction No.1 of 2015 dated 13-1-2015 issued by the CBDT cannot be relied upon to deny refunds to assesseees in whose cases notices might have been issued under section 143(2)

Facts

- The assessee by way of instant petition has challenged Instruction No. 1 issued by CBDT and the consequential letter issued by Deputy Commissioner of Income-tax denying refund of assessee under section 143(1) for three assessment years

Held

- It is the impugned instruction which is being relied upon by the Department to deny refund, where notice has been issued under section 143(2).
- The real effect of the instruction is to curtail the discretion of the AO by 'preventing' him from processing the return, where notice has been issued to the assessee under section 143(2). If the legislative intent was that the return would not be processed at all once a notice is issued under section 143 (2), then the legislature ought to have used express language and not the expression 'shall not be necessary'. By the device of issuing an instruction in purported exercise of its power under section 119, the CBDT cannot proceed to interpret or instruct the income tax department to prevent the issue of refund. In the event that a notice is issued to the assessee under section 143 (2), it will be a matter the discretion of the concerned AO whether he should process the return.
- Consequently, the Instruction No.1 of 2015 dated 13-1-2015 issued by the CBDT is unsustainable in law and is quashed. The said instruction cannot be relied upon to deny refunds to the assesseees in whose cases notices might have been issued under section 143(2).