

## Refund couldn't be denied just because scrutiny notice was served: Madras HC

**Summary – The High Court of Madras in a recent case of Randstad India (P.) Ltd., (the Assessee) held that Refund to assessee could not be denied merely due to issuance of notice for scrutiny under section 143(2)**

### Facts

- The assessee company was wholly owned subsidiary of RAP and was engaged in the business of providing various services in the core areas of recruitment, human resource solutions, etc. The returns filed by the assessee for the previous years were subjected to scrutiny assessment, and orders were passed under section 143(3). As a result of the scrutiny assessment undertaken in the prior years, the losses claimed by the assessee, in its tax return had marginally reduced. The income, the assessee earned from carrying out its business, were generally subject to withholding tax at a gross level, predominantly under section 194J and section 194C. As the assessee was incurring loss for successive assessment years, applications were filed for every year to issue *NIL* deduction certificates under section 197. Though the Deputy Commissioner had issued such certificate for the respective assessment years, the time between the date of application till the date of issuance of certificate, resulted in taxes being deducted by the customers in the interim period, leading to accumulation of Tax Deducted at Source (TDS) credit. The respondent failed to process the return of income filed by the assessee for the assessment years 2015-16 and 2016-17, under section 143(1) and grant the refund due to the assessee, as claimed in its return of income.
- Therefore, the assessee, filed applications requesting the revenue to process the return of income for the assessment years 2015-16 and 2016-17, and grant refund along with consequential interest. This was followed by reminders. However, the revenue had not considered the request placed by the assessee for processing the return of income.
- In instant writ petition, the assessee submitted that the revenue had relied on Central Board of Direct Taxes (CBDT) Notification, [vide Instruction No.1 of 2015, dated 13.01.2015](#), to all the Assessing Officers, directing that, processing of tax returns cannot be undertaken after issuing notice under section 143(2). But, the refund claim should be considered, despite scrutiny notices, having been issued under section 143(2). Further, it was submitted that, from the language used in section 143(1D), it could be inferred that the Assessing Officer has discretionary powers to process the returns and grant resultant refund due to the assessee, even in the case, where, scrutiny assessment had been initiated by issuing notice under section 143(2). Therefore, the department ought to have expedited the refund due to the assessee. It was submitted that for the assessment year 2014-15, the revenue committed an error and demanded interest under section 234(3) and thereby, denied the refund. The assessee filed a petition under section 154, for rectification of the error for the year 2014-15, and the revenue accepted the mistake, stating that, loss was not considered in the assessment order, and accordingly, passed an order, stating that the assessee was entitled to refund. Therefore, the assessee, for the subsequent assessment year, had approached

the Authority, well in advance, to process the return of income under section 143(1) to enable the assessee to secure refund.

#### Held

- The petitioner has filed these two writ petitions for a direction to expedite the refund claim made by the petitioner by processing their return of income for the assessment years 2015-16 and 2016-17 under section 143(1). Earlier, CBDT had issued Instruction No.1 of 2015, dated 13.01.2015, stating that, considering unambiguous language of the relevant provisions and the intention of law, CBDT, in exercise of the powers conferred on it, under section 119, clarifies that the processing of a return cannot be undertaken after notice has been issued under sub-section 2 of section 143. However, it shall be desirable that scrutiny assessments in such cases are completed expeditiously. This instruction issued by CBDT was challenged in a batch of cases before the High Court of Delhi, in *Tata Teleservices Ltd. vs. Central Board of Direct Taxes* [\[2016\] 240 Taxman 182/69 taxmann.com 226](#). The Division Bench quashed the said Instruction.
- In the light of the above decision, the Assessing Officer cannot fall back on the Instructions given by CBDT, and refuse to process the return under section 143(1). In fact, this Instruction has been cited by the petitioner to state that, it is one of the grounds, on which, the return has not been processed under section 143(1).
- The respondent has filed a counter affidavit, clearly stating that, he has not been influenced or guided by the CBDT's Instructions and is aware that Instruction has been quashed. It is the case of the respondent that, in exercise of his discretionary powers and in the light of the legal embargo under section 143(1D), the return cannot be processed under section 143(1).
- Some what similar stand was taken before the High Court of Bombay, in the case of *Group M. Media India (P) Ltd. v. Union of India* [\[2017\] 77 taxmann.com 106](#) and the action of the Officer in not processing the refund claim under section 143(1) was noted. Ultimately, the Bombay High Court issued a direction to consider the representation made by the petitioner within a time frame.
- As pointed out earlier, the petitioner has filed these writ petitions for two assessment years (2015-16 & 2016-17). It has to be seen as to whether the embargo under section 143(1D) would operate for both the assessment years.
- In terms of section 143(1D), as it stood prior to its substitution with effect from 01-04-2017, the processing of a return under section 143(1) shall not be necessary before expiry of the period specified under second proviso to sub-section (1), wherein, notice has been issued to the assessee under sub-section (2). Second proviso to section 143(1) states that, no intimation under sub-section (1) shall be sent after the expiry of the one year from the end of the financial year, in which, the return is made. So far as the assessment year 2015-16 is concerned, the outer time limit for processing of return has expired by July, 2017, after which, the respondent is statutorily prevented from processing the return under section 143 (1). However, this problem does not arise, insofar as the assessment for the year 2016-17 is concerned.

- Thus, considering the law laid down by the High Courts of Delhi, Bombay and Gujarat respectively, in the aforementioned decisions and taking note of the fact that the petitioner had suffered at the hands of the Assessing Officer for the assessment year 2014-15, as the Assessing Officer committed a glaring error by treating the petitioner's loss, as if it is an income and demanding tax for the assessment year 2015-16, thereby, wiping out the refund claim made by the petitioner, which error, the petitioner was able to set right only in 2017, and the Assessing Officer having accepted the mistake and passed an order under Section 154, and granted refund, it would be a fit case, where, appropriate direction should be issued to the respondent.
- For the assessment year 2015-16, the case was selected for scrutiny and notice under section 143(2) was issued on 04-07-2016. Apart from that, the time limit of one year from the end of the financial year is over, and the question of issuing an intimation under Section 143(1) does not arise, as there is a statutory prohibition under second proviso to section 143(1). This is so, because, the return of income was filed by the assessee on 28-11-2015, and the period of one year expired on 31.03.2017. Apart from that, the application/representation, dated 13-07-2017, given by the petitioner for grant of refund was received by the respondent on 20-07-2017, after issuance of notice under section 143(2). However, that does not mean the return needs to be endlessly kept pending. In fact, this aspect was also considered in *Group M. Media India (P) Ltd. (supra)*, wherein, the Court observed that, CBDT has issued notification, *vide* Instruction No.7 of 2002, dated 01.08.2002, wherein, they specifically directed the Assessing Officer of the Revenue to process all returns, in which, refunds are payable expeditiously. Reference was also made to the Citizen's Charter issued by the Income Tax Department, in its vision statement, published in 2014, Department should issue refund along with interest under section 143(1) within six months from date of electronically filing the returns.
- In the light of the above, both the writ petitions are disposed of with the following directions:-
  - (i) The respondent is directed to consider the petitioner's application/representation, dated 13-07-2017, (which was received by the respondent on 20-07-2017) for the assessment year 2016-17, and process the return filed for the said assessment year under section 143(1) and pass appropriate orders within a period of six weeks from the date of receipt of a copy of this order.
  - (ii) So far as the scrutiny assessment for the year 2015-16 is concerned, the petitioner is directed to extend full cooperation in the assessment proceedings and the Assessing Officer is directed to complete the scrutiny assessment as expeditiously as possible.
  - (iii) However, there shall be no order as to costs. Consequently, connected Writ Miscellaneous Petitions are closed.