

TAX FLASH NEWS

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Tax authorities cannot avoid processing of the tax return under Section 143(1) of the Income-tax Act and granting refund to the taxpayer

Recently, the Bombay High Court in case of Tata Communications Limited¹ (taxpayer) held that the tax authority cannot avoid processing the tax return under Section 143(1) of the Income-tax Act, 1961 (the Act) and granting refund to the taxpayer. In the instant case, the tax authorities did not cite justifiable reasons for not issuing the refund. Accordingly, the High Court directed to process return under Section 143(1) of the Act and release refund with statutory interest within one month from the date of receipt of the court order.

Facts of the case

During the Assessment Year (AY) 2015-16, the taxpayer filed a tax return claiming a refund. The Assessing Officer (AO) in terms of Section 143(1) of the Act could not process the tax return before 31 March 2018. However, the AO issued a scrutiny notice under Section 143(2) of the Act, on 27 March 2017. Subsequently, the taxpayer approached the AO and higher authorities requesting processing of its tax return under Section 143(1) of the Act and release of refund flowing from such tax return, subject to limited adjustments. However, tax department denied the same. Aggrieved, the taxpayer filed this writ petition.

High Court decision

In an affidavit of the tax department, a reference was made to the provisions of Section 143(1D) of the Act and the fact that the AO had issued a notice under Section 143(2) of the Act. After referring to these provisions, it was stated that the taxpayer was informed that the refund cannot be issued in view of Section 143(1D) of the Act, since notice under Section 143(2) of the Act is already issued. A reference is also made to a draft assessment order for the year under consideration, which if ultimately finalised would give rise to a tax demand from the taxpayer instead of department paying refund. The High Court observed that, as per different decisions of this Court and other High Courts, none of these grounds will be sufficient

to enable the tax department to withhold the refund arising out of the return for the AY 2015-16.

The High Court referred to various decisions² and held that the tax authority cannot avoid processing the tax return under Section 143(1) of the Act and granting refund to the taxpayer. The tax authority did not cite justifiable reasons for not issuing refund. Accordingly, the High Court directed to process return under Section 143(1) of the Act and release refund if due, with statutory interest as payable within one month from the date of receipt of the Court order.

Our comments

The issue with respect to non-granting of refund vis-à-vis processing of tax return under Section 143(1) of the Act pending scrutiny proceedings has been a subject matter of litigation before the courts.

Various courts³ have held that refund to the taxpayer could not be denied merely due to issuance of notice for scrutiny under Section 143(2) of the Act.

The High Court in the present case has held that the tax department cannot avoid processing the return under Section 143(1) of the Act and granting refund to the taxpayer.

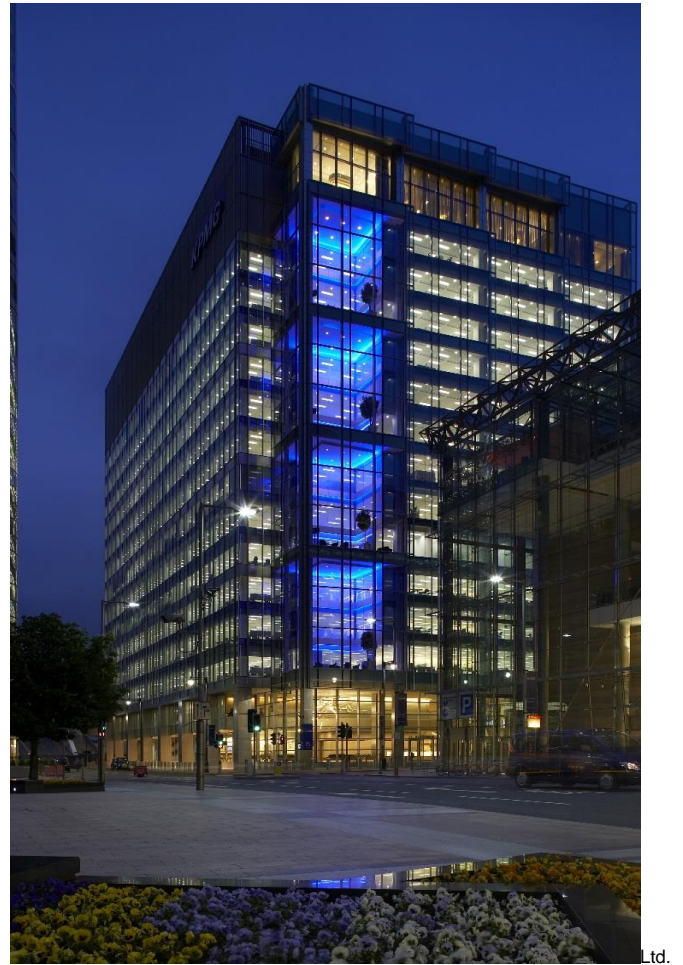
In order to address the grievance of delay in issuance of refund in genuine cases which are routinely selected for scrutiny assessment, provisions of Section 143(1D) were ceased to apply in respect of returns furnished for AY 2017-18 and onwards by virtue of the Finance Act, 2017. However, to address the concern of recovery of revenue in doubtful cases, a new Section 241A was introduced to provide that, for the returns furnished for AY commencing on or after 1 April 2017,

² Group M. Media India (P) Ltd. v. UOI [2016] 388 ITR 594 (Bom), Tata Projects Limited v. DCIT [2017] 88 taxmann.com 325 (Bom), Corrtch International (P) Ltd. v. DCIT [2018] 401 ITR 355 (Guj)

³ Corrtch International (P.) Ltd. v. DCIT [2018] 401 ITR 355 (Guj), Aegis Ltd. v. UOI [2017] 77 taxmann.com 5 (Bom), Randstad India (P.) Ltd. v. DCIT [2017] 401 ITR 369 (Mad), Indus Towers Limited v. UOI (W.P. (C) 3665/2015, 6 October 2016)

¹ Tata Communications Limited v. DCIT (Writ Petition No. 894 of 2019, dated 8 July 2019)

where refund of any amount becomes due to the taxpayer under Section 143(1) and the AO is of the opinion that grant of refund may adversely affect the recovery of revenue, the AO with the previous approval of the Principal Commissioner or Commissioner, withhold the refund upto the date on which the assessment is made.



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