



Under Section 143(1D) of the Income-tax Act, the tax officer is ought to apply his mind and grant a refund, if any, expeditiously

Background

Recently, the Bombay High Court in a media agency's case¹ (the taxpayer) held that no reference to the CBDT Instruction² can be made by the tax officer while disposing of the taxpayer's application for processing its return under Section 143(1) of the Income-tax Act, 1961 (the Act) and granting of consequent refund, if any. The Assessing Officer (AO) should independently apply his mind and take a decision in terms of Section 143(1D) of the Act.

The High Court observed that the powers of a Court³ are not limited only to prerogative writs but also to issue any direction or order for doing justice. Therefore, the AO is directed to consider and process the taxpayer's representation to process the return and dispose of the same as expeditiously as possible within a period of eight weeks.

Facts of the case

- On 29 November 2015, the taxpayer filed its return of income for the Assessment Year (AY) 2015-16 and claimed a refund. Subsequently, on 12 April 2016, the AO issued a scrutiny notice under Section 143(2) of the Act.
- On 27 April 2016, the taxpayer requested the AO to process its return in terms of Section 143(1) of the Act and grant the refund.
- The taxpayer also relied on the Delhi High Court⁴ decision which had held that the instruction issued by CBDT preventing the issue of refund if the case is selected for scrutiny is without jurisdiction.

- Further, on 12 August 2016, the taxpayer made a representation before the AO as well as to the Principal Commissioner of Income Tax (PCIT) seeking the processing of its return in terms of Section 143(1) of the Act and granting of consequent refund in respect of its return filed for AY 2015-16.
- The AO did not respond to the taxpayer's requests for refunds.
- The taxpayer filed a writ petition before the High Court seeking a mandamus⁵ to the AO to process the return of income under Section 143(1) of the Act and grant consequent refund, if due.

High Court's ruling

- The Delhi High Court⁶ had held that the instruction issued by CBDT is without jurisdiction. 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 the AO to dispose of a case in a particular manner nor can the instructions be prejudicial to the taxpayer. Therefore, the circulars/orders/instructions issued by the CBDT under Section 119 of the Act would be binding upon the tax department only to the

¹ Writ Petition No. 2067 OF 2016 – Bombay High Court - bombayhighcourt.nic.in

² CBDT Instruction No. 1/2015, dated 13 January 2015

³ Under Article 226 of the Constitution of India

⁴ [2016] 386 ITR 30 (Del)

⁵ A judicial writ issued as a command to an inferior court or ordering a person to perform a public or statutory duty

⁶ [2016] 386 ITR 30 (Del)

extent they are beneficial to the taxpayer. Such Instructions, if not beneficial to the taxpayer, cannot prevail over the Act. The Delhi High Court held that instruction issued by the CBDT is unsustainable in law and, therefore, set it aside.

- The tax department is not disputing the decision of the Delhi High Court either on facts or in law. Therefore, in view of the decision of the Bombay High Court in the case of Godavaridevi Saraf⁷, the officers implementing the Act are bound by the decision of the Delhi High Court which has quashed Instruction No.1 of 2015 dated 13 January 2015. Accordingly, no reference to the CBDT Instruction can be made by the AO while disposing of the taxpayer's application in processing return under Section 143(1) of the Act.
- The AO should independently apply his/her 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 taxpayer's case for AY 2015-16.
- The AO has not informed the taxpayer as to why he does not deal with the applications made by the taxpayer. When the taxpayer filed a writ petition, the stand is taken by the tax department that last date to process the return under Section 143(1) of the Act is 31 March 2017 and thus direction for expeditious processing of return should not be granted. This approach of the AO is preposterous.
- CBDT Instruction No.7/2002⁸ specifically directed the tax officers to process all returns in which refunds are payable expeditiously. Similarly, in 2014 in the citizen's charter issued by the income tax department in its vision statement states that the tax department aspires to issue refunds along with interest within 6 months from the date of electronically filing the returns.
- In the present case, the return was filed on 29 November 2015, yet the AO has not processed the return and taken a decision to grant or not grant a refund under Section 143(1D) of the Act.

- 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, the AO is directed to consider and process the taxpayer's representation dated 12 August 2016 and dispose of the same as expeditiously as possible within a period of 8 weeks.

Our comments

In the instant case, the Bombay High Court held that under Section 143(1D) of the Act, the tax officer is ought to apply his mind and grant a refund, if any, expeditiously.

This decision may provide relief to the taxpayers whose refund has not been granted by the tax officer by relying on the CBDT Instruction No. 1/2015.

Under the provision of Section 143(1D) of the Act as introduced by the Finance Act, 2012 processing of a return under Section 143(1)(a) was not necessary where a scrutiny notice has been issued under Section 143(2) of the Act. This provision has been amended by the Finance Act, 2016 (with effect from the AY 2017-18) to provide that –

- If scrutiny notice is issued under Section 143(2), processing of return shall not be necessary before the expiry of one year from the end of the financial year in which return is submitted.
- However, the return shall be processed under Section 143(1) before making an assessment under Section 143(3) of the Act.

⁷ CIT v. Godavaridevi Saraf [1978] 113 ITR 589 (Bom)

⁸ Instruction No. 7/2002, dated 1 August 2002

www.kpmg.com/in

Ahmedabad

Commerce House V, 9th Floor,
902 & 903, Near Vodafone House,
Corporate Road,
Prahlad Nagar,
Ahmedabad – 380 051
Tel: +91 79 4040 2200
Fax: +91 79 4040 2244

Bengaluru

Maruthi Info-Tech Centre
11-12/1, Inner Ring Road
Koramangala, Bangalore 560 071
Tel: +91 80 3980 6000
Fax: +91 80 3980 6999

Chandigarh

SCO 22-23 (1st Floor)
Sector 8C, Madhya Marg
Chandigarh 160 009
Tel: +91 172 393 5777/781
Fax: +91 172 393 5780

Chennai

No.10, Mahatma Gandhi Road
Nungambakkam
Chennai 600 034
Tel: +91 44 3914 5000
Fax: +91 44 3914 5999

Delhi

Building No.10, 8th Floor
DLF Cyber City, Phase II
Gurgaon, Haryana 122 002
Tel: +91 124 307 4000
Fax: +91 124 254 9101

Hyderabad

8-2-618/2
Reliance Humsafar, 4th Floor
Road No.11, Banjara Hills
Hyderabad 500 034
Tel: +91 40 3046 5000
Fax: +91 40 3046 5299

Kochi

Syama Business Center
3rd Floor, NH By Pass Road,
Vytilla, Kochi – 682019
Tel: +91 484 302 7000
Fax: +91 484 302 7001

Kolkata

Unit No. 603 – 604,
6th Floor, Tower – 1,
Godrej Waterside,
Sector – V, Salt Lake,
Kolkata 700 091
Tel: +91 33 44034000
Fax: +91 33 44034199

Mumbai

Lodha Excelus, Apollo Mills
N. M. Joshi Marg
Mahalaxmi, Mumbai 400 011
Tel: +91 22 3989 6000
Fax: +91 22 3983 6000

Noida

6th Floor, Tower A
Advant Navis Business Park
Plot No. 07, Sector 142
Noida Express Way
Noida 201 305
Tel: +91 0120 386 8000
Fax: +91 0120 386 8999

Pune

703, Godrej Castlemaine
Bund Garden
Pune 411 001
Tel: +91 20 3050 4000
Fax: +91 20 3050 4010

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2016 KPMG, an Indian Registered Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative (“KPMG International”), a Swiss entity. All rights reserved.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.

© 2016 KPMG, an Indian Registered Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative (“KPMG International”), a Swiss entity. All rights reserved.