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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 11561/2022

M/S. M. J. ENGINEERING CONSULTANTS P LTD Petitioner
Through: Mr.S.Krishnan, Advocate.

versus

INCOME TAX OFFICER & ORS. Respondents
Through: Mr.Abhishek Maratha, Sr.Standing
Counsel for the Revenue.

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Date of Decision: 16th August, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J (Oral):

C.M.No.34244/2022

Exemption allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

W.P.(C) No.11561/2022

1. Present writ petition has been filed seeking directions to the respondents to issue the refund as claimed in return of income dated 11th September, 2015 along with applicable interest under Section 244A of

the Income Tax Act, 1961 [‘the Act’] for the Assessment Year 2015-16.

2. On the last date of hearing, while accepting notice, Mr. Abhishek Maratha, learned senior standing counsel on behalf of the Respondents- Revenue had stated that Central Processing Centre (CPC), Bangalore had no role to play in the present case within extended time limit specified in ITBA Instruction dated 08th October, 2018 and that refund had not been issued, as the Assessing Officer had to process the return before the due date prescribed under Section 143(1) of the Act after taking approval of CCIT. However, Mr. Abhishek Maratha on the said date of hearing had sought further time to obtain further instructions from the Assessing Officer.

3. Today, Mr. Abhishek Maratha has handed over the instructions received by him from the Assessing Officer. The same are reproduced hereinbelow:-

“The assessee company M/s M.J. Engineering Consultants Pvt. Ltd. (PAN AAHCM3756B) has filed its ITR for AY 2015-16 on 11.09.2015 vide ACK No. 793330171110915 at the total Income of Rs. 20,26,638/- and thereby claiming the refund of Rs. 11,27,410/-. The ITR of the assessee couldn't be processed by the CPC and the same was transferred on 04-Dec-2015 to then Jurisdictional AO i.e. Circle 16(1), Delhi however the same could not be processed under sub-section (1) of section 143 of the Act due to some technical reasons or otherwise not attributed to the assessee. Consequently, intimation regarding processing of the return could not be sent within the period as prescribed in the second proviso to section 143(1) of the Act. Later, the PAN as well as jurisdiction of the assessee was transferred to the charge of undersigned i.e. Ward 16(1), Delhi on 15/05/2019.

The assessee has filed grievance vide CBODT/E/2021/37599 dated 07.12.2021, CBODT/P/2022/00006 dated 12.05.2022 and CBODT/P/2022/00007 dated 20.05.1922 because it couldn't get its legitimate refund in accordance with provisions of the Act. The CPGRAM grievance was forwarded to the DIT System for technical

support. Direction from the system was that since Return has got time barred, so user cannot process the return and suggested to process the same through manual order after administrative approval of PCCTT/CCIT as per CBDT instruction No 5/2018 and send the proposal to enable the processing /uploading of the case in the system to Pr. DGIT(s)/ADG(s)-3 as per the process described in ITBA processing instruction no 4.

The Instruction given by the System was perused however, it was observed that ITBA Processing Instruction No. 4, the threshold date to take action for processing on time barred ITRs was up to 31.03.2019 which was further extended up to 30.11.2021 by the CBDT vide Order F. No. 225/98/2020-ITA-II, dated 30-09-2021 however since grievance of assessee was filed on 07.12.2021 i.e. after the expiry of the extended date by the CBDT, the ITR of the assessee could not be processed in the given time frame and status of the same was updated on Grievance Portal accordingly.

Further, raising the above issue, an e-mail dated 03.06.2022 was sent to CPC and ITBA Helpdesk requesting to provide the proper steps/direction/instruction so that the ITR of assessee may be processed in view of the fact that action as per the instruction quoted by the System could be taken only up to 30.11.2021 i.e. the extended date for processing of time barred ITRs however no way out was given by the CPC or ITBA Helpdesk.

Assessee has further filed appeal against the resolution of CPGRAM and it was advised during the said appeal proceedings that matter be forwarded to higher authorities. Accordingly, a proposal/request letter dated 23.06.2022 was sent to CBDT requesting to consider the issue grant the necessary direction/ approval for processing of the ITR of the assessee as per section 119 of the IT Act, 1961.

Since, the approval from the CBDT was still not received in the case; the impugned ITR of the assessee couldn't be processed yet.

The letter sent to CBDT, copy of e-mail sent to CPC and ITBA Helpdesk and copy of referred ITBA instruction are also attached herewith for ready reference.

The facts of the case are hereby submitted for preparing of

counter affidavit and any further requirement may please be informed to the undersigned.”

4. Apart from adopting the aforesaid submissions, Mr. Maratha points out that as the petitioner’s return was not processed due to technical reason not attributable to assessee, no refund was issued. He emphasises that in the present case, the petitioner had not applied for refund within the extended period of time for processing of the return.

5. He also relies upon the judgment of the Supreme Court in ***Assistant Commissioner of Income Tax vs. Rajesh Jhaveri Stock Brokers Private Limited, (2008) 14 SCC 208***, wherein it has been held as under:-

“15. In the scheme of things, as noted above, the intimation under section 143(1)(a) cannot be treated to be an order of assessment. The distinction is also well brought out by the statutory provisions as they stood at different points of time. Under section 143(1)(a) as it stood prior to April 1, 1989, the Assessing Officer had to pass an assessment order if he decided to accept the return, but under the amended provision, the requirement of passing of an assessment order has been dispensed with and instead an intimation is required to be sent. Various circulars sent by the Central Board of Direct Taxes spell out the intent of the Legislature, i.e., to minimize the departmental work to scrutinize each and every return and to concentrate on selective scrutiny of returns. These aspects were highlighted by one of us (D. K. Jain J) in Apogee International Limited v. Union of India.

16. It may be noted above that under the first proviso to the newly substituted section 143(1), with effect from June 1, 1999, except as provided in the provision itself, the acknowledgment of the return shall be deemed to be an intimation under section 143(1) where (a) either no sum is payable by the assessee, or (b) no refund is due to him. It is significant that the acknowledgment is not done by any Assessing Officer, but mostly by ministerial staff. Can it be said that any “assessment” is done by them? The reply is an emphatic “no”. The intimation under section 143(1)(a) was deemed to be a notice

of demand under section 156, for the apparent purpose of making machinery provisions relating to recovery of tax applicable. By such application only recovery indicated to be payable in the intimation became permissible. And nothing more can be inferred from the deeming provision. Therefore, there being no assessment under section 143(1)(a), the question of change of opinion, as contended, does not arise.”

6. He contends that till the Court or the CBDT extends the time for processing of the return, the refund cannot be granted to the petitioner.

COURT'S REASONING

SINCE THE ASSESSING OFFICER HAS FAILED TO PROCESS THE RETURN OF THE PETITIONER FILED IN ACCORDANCE WITH LAW WITHIN THE PRESCRIBED TIME, THE RETURN AS FILED WILL HAVE TO BE TREATED AS 'DEEMED INTIMATION' AND AN ORDER UNDER SECTION 143(1) OF THE ACT.

7. This Court is of the view that after filing of the return (under Section 139 of the Act) along with due verification (under Section 140 of the Act) and paying taxes as per return (under Section 140A of the Act), a tax-payer has to simply wait for the refund (as computed in the return) unless the same is disputed by the Tax Department through notices under Sections 142(1) or 143(2) or a defect memo under Section 139(9) of the Act.

8. Since, in the present case, the Assessing Officer has failed to process the return of the petitioner filed in accordance with law within the prescribed time, this Court is of the opinion that the return as declared/filed will have to be treated as 'deemed intimation' and an order under Section 143(1) of the Act. (See: ***Court on its own Motion vs. Union of India 2013 (352) ITR 273 (Delhi)***).

9. This Court is also of the view that an assessee cannot be penalised for inaction on the part of the respondent-department.

CONCEPT OF 'INTIMATION' UNDER SECTION 143(1) OF THE ACT AND 'REFUND' ARE ENTIRELY DIFFERENT.

10. Further, the concept of 'intimation' under Section 143(1) of the Act and 'refund' are entirely different. Second proviso to Section 143(1) of the Act deals with the issue of intimation and not refund as contemplated under Clause (e) of Section 143(1) of the Act. In fact, the concept of 'refund' has been separately dealt with under Chapter XIX of the Act. Section 237 of the Act reads as under:-

“Refunds.

237. If any person satisfies the [Assessing] Officer that the amount of tax paid by him or on his behalf or treated as paid by him or on his behalf for any assessment year exceeds the amount with which he is properly chargeable under this Act for that year, he shall be entitled to a refund of the excess.”

ASSESSEE NEED NOT FILE ANY SEPARATE CLAIM FOR REFUND AS THE SAME IS DEEMED TO HAVE BEEN INCORPORATED IN THE RETURN FILED BY THE ASSESSEE ITSELF.

11. This Court is of the view that the assessee need not file any separate claim for refund as the same is deemed to have been incorporated in the return filed by the assessee itself.

12. Further, prior to expiry of time for processing of return or failure of the respondent to process the return within the stipulated and or extended time, the petitioner has no right to expect refund. In fact, upon respondent's failure to process an assessee's return within time, the right to refund arises by operation of law.

JUDGMENT IN RAJESH JHAVERI STOCK BROKERS PRIVATE LIMITED (SUPRA) HAS NO APPLICATION AS IT DEALS WITH THE CASE OF RE-ASSESSMENT AND MAKES A DISTINCTION BETWEEN 'INTIMATION' AND 'ASSESSMENT' UNDER SECTION 143(1) AND 143(3) OF THE ACT.

13. Moreover, the judgment of the Supreme Court in **Rajesh Jhaveri Stock Brokers Private Limited** (supra) has no application to the facts of the present case inasmuch as it deals with the case of re-assessment and makes a distinction between 'intimation' and 'assessment' under Section 143(1) and 143(3) of the Act.

IF THE SUBMISSION OF TAX DEPARTMENT IS ACCEPTED, THEN IT WOULD AMOUNT TO UNJUST ENRICHMENT ON THE PART OF THE STATE.

14. If the submission of learned counsel for Income Tax Department, as articulated in the instructions received by him from the Assessing Officer is accepted, then it would amount to unjust enrichment on the part of the State, which is legally impermissible. It is pertinent to mention that the principle of unjust enrichment proceeds on the basis that it would be unjust to allow a person to retain a benefit at the expense of another person. Supreme Court in a nine Judges Bench judgment in **Mafatlal Industries Ltd. vs. Union of India, (1997) 5 SCC 536** has held that once unjust enrichment is proved, restitution is the answer i.e. the person must be given back that benefit.

15. Further, if the respondents do not refund the amount immediately due and payable to the assessee, then interest on the said amount would accrue at the expense of the tax payer.

RELIEF

16. Consequently, the respondents are directed to refund the excess amount paid as tax by the petitioner along with the interest within four weeks of receipt of this order.

17. With the aforesaid observations and directions, present writ petition stands disposed of.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

AUGUST 16, 2022

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