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

% **Date of Decision : 14th December, 2018**

\+ **W.P.(C) 2730/2018 & CM Nos.46054-55/2018**

M/S VODAFONE MOBILE SERVICES LTD ..... Petitioner

Through: Mr. Harish N. Salve, Senior Advocate with Ms. Anuradha Dutt, Mr. Sachit Jolly, Mr. Siddharth Joshi & Mr.Kunal Dutt, Advocates.

versus

ASST. COMMISSIONER OF INCOME–TAX & ANR. ……Respondents

Through: Mr. Zoheb Hossain, Senior Standing Counsel

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

S. RAVINDRA BHAT, J. (ORAL)

1. The present Writ Petition No.2730/2018 is filed by the petitioner (hereafter "Vodafone") under Article 226 and 227 of the Constitution of India on account of inaction on the part of the Assistant Commissioner of Income Tax (hereafter referred as "respondent") in not processing income tax returns for four Assessment Years (hereafter referred as "AY") 2014-15 to 2017-18 (hereafter referred as the "relevant period under consideration") which will result in issuance of refunds aggregating to ₹4759.74 crores along with applicable interest under Section 244A of the Income Tax Act (hereafter referred as "Act"). A tabular depiction of the claims for refund for the aforementioned AYs is as under:-

ASSESSMENT YEAR	AMOUNT OF REFUND CLAIMED (in Cr.)
2014-15	₹ 1,532.09
2015-16	₹ 1,355.51
2016-17	₹ 1,128.4 7
2017-18	₹ 743.67
Total	₹4759.74

2. The writ petition claims a direction upon the respondent to expeditiously process the refund claim made by Vodafone, and issue refund in respect of Vodafone's income tax returns for the relevant period under consideration, together with eligible interest under Section 244A of the Act.

3. Briefly, Vodafone is engaged in providing telecommunication services. There were a total of seven group entities providing telecom services in different circles, as named below :

(1) Vodafone Mobile Services Ltd. ("VMSL")
(2) Vodafone Cellular Limited ("VCL")
(3) Vodafone Digilink Limited ("HVDL")
(4) Vodafone East Limited ("VEL")
(5) Vodafone South Limited ("VSL")
(6) Vodafone Spacetel Limited ("VSPL")
(7) Vodafone West Limited ("VWL")

4. Two amalgamation involving merger of certain Vodafone group companies were undertaken to re-structure business operations and increase operational efficiencies. Four Vodafone group entities (HVDL, VEL, VSLand VCL) amalgamated with Vodafone under the first scheme of amalgamation

w.e.f. 01.04.2011. Further, the second scheme of amalgamation, two other groups (VSPL and VWL) amalgamated with Vodafone w.e.f. 01.04.2012. The Revenue was duly intimated about the two schemes of amalgamation. As a consequence, all proceedings in the case of the amalgamating entities are to be carried on in the name of Vodafone.

5. The revised e-returns of income pertaining to AY 2014-15 and AY 2015-16, were filed on 31.03.2016 and 25.11.2016 respectively, claiming refunds of ₹l,532.09 crores and ₹l,355.51 crores, respectively. Subsequently, in view of the Advance Pricing Agreement dated 18.11.2016 entered by Vodafone with the Central Board of Direct Taxes (hereafter referred as 'CBDT') under section 92CC of the Act, it filed modified tax return as per the mandate of section 92CD of the Act for AY 2014-15 on 22.02.2017. However, such returns have not been processed till date. The return of income pertaining to AY 2016-2017, claiming refund of ₹ l128.47 crores was filed on 30.11.2016. However, this too has not been processed till date.

6. In the meanwhile, the Revenue (in certain pending writ petitions) filed a Civil Miscellaneous Application in WP(C)Nos.12301, 12303 and 12307 of 2015 in the month of March 2017 before this court (later withdrawn), whereby it, *inter alia*, agreed to process the tax returns filed by Vodafone for AYs 2012-13 to 2016-17 irrespective of the pending assessments. The Revenue, by such application sought this court's permission to process such return and adjust the refunds to the extent of the stayed outstanding tax demand. However, such application was later withdrawn. Therefore, there exists no reason why the legitimate refunds continue to be held back from Vodafone.

7. Further, by a letter dated 24.07.2017, Vodafone requested the revenue for expeditious processing of the pending income tax returns. It duly submitted that

it was under financial stress and no recoverable demands are foreseeable, thus stating that there was no ground for delaying the processing of the returns and issuance of the consequent refunds. Thereafter, by letter dated 19.09.2017, Vodafone reiterated that it was under immense financial stress and, therefore, the returns should be processed forthwith. Vodafone also submitted that system related issues cannot be held against Vodafone so as to deny its due and such considerable delay is against the mandate of the provisions of the Act and the law laid down by this court. Vodafone submits that the ITD System does have a functionality, enabling the revenue to manually grant credit of tax in case of a merger. Reliance in this regard is placed on the decision in the case of *Times Internet* v. *Additional Commissioner of Income Tax* WP (C) 3384 of 2017. The relevant para of the case is extracted hereunder for ready reference:

> *"1. Pursuant to the order of this Court dated 6th July, 2017, a reply has been handed over today on behalf of the Respondents wherein it has been, inter alia, stated that 71% of the tax refund amount claimed by the Petitioner for the AYs 2013-14 and 2014-15 has been processed by the Department. It is sought to be explained by Mr. Rahul Chaudhary; the learned Senior Standing Counsel for the Revenue that new software has to be developed to process the refund claims and, pending the development of such software, manual credit for tax deducted at source, after verification, is being given. The Respondent seeks six more months' time to process all the refund claims and issue appropriate orders.*
>
> *2. Mr. C. S. Agarwal, learned Senior Counsel for the Petitioner, points out that for no fault of the Petitioner, it is being made to unnecessarily wait for what is legitimately due to it and that the time, as sought by the Respondent, is unreasonable. Mr. Chaudhary explains that the Systems Directorate of the Department is doing its best to develop the software functionality and, as it is, a large portion of its work force is engaged only in the task of processing the Petitioner's refund Applications. It is also stated that as*

many as 10,746 entries in the 26AS Form had to be manually given tax credit so for and, considering the number of entries involved, the time sought is not unreasonable.

3. The Court notes that the balance refund which remains to be processed to the tune of Rs.15.86 crores along with interest. Considering that any further delay would only mean further loss to the exchequer on account of the interest which will become payable, it is in the interest of the Revenue to expedite the entire process. The Respondent should inform the Court within a period of three months the further progress made in the matter of processing the refund claims for the remaining AYs."

8. Vodafone also placed reliance on the decision of this court in *Tata Teleservices Limited vs. CBDT,* 386 ITR 30 and Bombay High Court in *Group M Media India (P)* vs. *Union of India,* 2016 SCC OnLine Bom 13624, which held that the return should be processed within a year and only where the assessing officer is of the view that issuance of refund would be detrimental to collection of demands which may arise, he may invoke the provision of Section 143(1D) of the Act.

9. Further, Vodafone submits that the intent of the court has also been accepted by the Government, which is evident by the fact that the Section 143(1D) has been amended. It is submitted that the intent of retaining discretion is evident by the insertion of Section 241A of the Act. From the perusal of the section 241A of the Act, it is evident that all tax returns are necessarily to be processed within the time period as prescribed under section 143(1) of the Act. In the present case, it is noteworthy that the time period prescribed under Section 143(1) of the Act has already expired and there has been no correspondence from the Respondents that discretion under section 143(1D) has been exercised.

10. On 27.09.2017, Vodafone again requested the Revenue that the returns of income be processed expeditiously and if it were in disagreement then a personal hearing followed by a reasoned order as to why the returns of income were not being processed be given. In the interim, through notice dated 21.09.2017, the Revenue sought to delay the issuance of the refunds arising from the processing of the returns by issuing a letter to Vodafone, *inter alia*, calling for details of the amalgamating entities as well asking Vodafone to give "consent" to adjustment of refunds due to Vodafone against demands, which have already been stayed by the various Courts and Tribunals. In response, Vodafone filed a detailed reply pointing that the details sought were already part of an application filed by the Revenue before this court and also giving a detailed rebuttal; it further requested for refunds. Vodafone also stated that it filed its returns for AY 2017-18 on 25.l1.2017 claiming a refund of ₹743.67 crore. The refund sought was because of delay in issuing the "Nil" withholding certificate sought by Vodafone in August, 2016. While Vodafone had sought a nil withholding order, a lower withholding order was issued, after a delay of five (5) months. It is submitted that while the time limit prescribed under the provisions of section 143(1) has not yet lapsed for the year, it could not act as a bar on the processing of the return and the grant of consequential refund to Vodafone since such refund has arisen largely on account of delay on the revenue's part.

11. Vodafone contends that revenue's deliberate omission to process and grant refunds for the relevant period under consideration is contrary to Section 143(1) given that such processing of refunds not later than one year from the end of the relevant financial year is mandated. It is also argued that the revenue's omission to process and grant refunds for AYs 2014-15 to 2017-18 is on the pretext of system related problems is contrary to the law laid down in

Times Internet v. *ACIT WP(C)* 3384 of 2017. Further, it is urged that the Revenue had in WP(C)Nos.12301, 12303 and 12307/2015 agreed to process the tax returns, it cannot now decide not to process the same under the same set facts and circumstances. Alleging that the revenue acted casually, Vodafone submits that its omission is causing serious financial prejudice.

12. With respect to the AY 2017-18, Vodafone contended that a delay has arisen in processing of return of income on account of delay caused by the Respondents in issuing the NIL withholding order for the relevant AY and this delay on behalf of the respondents is contrary to the law as per *Tata Teleservices Limited* v. *CBDT* (supra). It is alleged that the revenue's inaction in not granting refunds has resulted in blocking of Vodafone's working capital and caused it grave financial hardship particularly, in view of its sustained losses incurred year after year. Withholding of refunds, says Vodafone violates of the principle contained in Articles 265 and 300A of the Constitution of India.

13. With respect to the delay in processing of the tax returns, Vodafone places reliance on the decision of this court in *Tata Teleservices Limited vs Central Board of Direct Taxes* (supra), and the decision of the Bombay High Court in *Group M Media India (P) vs Union of India* (supra), where it was held that the return should be processed within a year and only where the assessing officer is of the view that issuance of refund would be detrimental to collection of demands that may arise, he may invoke the provision of Section 143(1D) of the Act. From the perusal of section 241A of the Act, it is evident that all tax returns are necessarily to be processed within the time period as prescribed under Section 143(1) of the Act. In the instant case, it is note-worthy that the time period prescribed under Section 143(1) of the Act has expired and there has been no correspondence from the revenue that discretion under Section 143(1D) was exercised.

14. Appearing for Vodafone, Mr. Harish Salve, Senior counsel, urged that the Revenue deliberately did not process Vodafone's tax returns for the relevant assessing years, resulting in deprivation of refund of about approximately ₹5,500 crores despite repeated reminders and requests on its behalf. The Senior counsel further urged that for the AYs 2012-13 and 2013-14, the limitation period expired on 15.09.2018 and for AYs 2014-15, 2015-16 and 2016-17, the limitation expires on 31.12.2018. Mr. Salve alleged that the intention of the revenue is obvious and it defeats the very object and purpose of the enactment.

15. Counsel argued that Act does not provide for automatic adjustment towards the demand arising in any assessment year. In this regard, he relied on the decision of this court in *Court on its Motion v Commissioner of Income Tax* (W.P. (C) No. 2659 of 2012) where it was held that Section 245 of the Act contemplates prior intimation to the assessee to enable a response before any adjustment is made towards the demand relating to any other assessment year. Thus, an opportunity of response/reply should be given and after considering the assessee's stand and plea, a justified order for adjustment of refund could be made. Further, the court held that an assessee can be denied interest if delay is attributable to him in terms of Section 244A (2). However, when the delay is not attributable to the assessee but due to the fault of the Revenue, then interest should be paid under the section. The Bench held that the law requires intimation under Section 143(1) to be communicated to the assesee, if there is an adjustment made in the return resulting either in demand or reduction in refund. Uncommunicated orders/intimations cannot be enforced and are not valid.

16. Counsel also cited *Commissioner Of Income Tax and Others vs. Society for the Promotion of Education* [2016] 382 ITR 6 (SC), where the short issue is with regard to the deemed registration of an application under Section 12AA of

the Act. The SC upheld the order of the High Court which had taken the view that once an application is made under the said provision and in case the same is not responded to within six months, it would be taken that the application is registered under the provision.

17. It was contended that after the lapse of the one year period, by reason of second proviso to Section 143 (1), the right to claim refund is vested in any assessee. Counsel argued that this is independent of the Revenue's power to issue a scrutiny notice under Section 143 (2), for which the period of limitation is longer. However, if the AO does not issue any notice, or intimation, if the assessee can claim refund, that right is a statutorily vested one if, within the said period of one year, a reasoned order is not made under Section 143 (1D) within the said one year period.

The Revenue's stand

18. The Revenue argued that processing of returns without scrutiny would be prejudicial to its interests as there is a likelihood of additions to Vodafone's income on the following grounds, namely,

(i) Certain additions are made pursuant to adjustment by the Transfer Pricing officer.

(ii) With respect to the issue of capitalization of license fees, the Revenue submitted that Vodafone debits the Revenue share of license to the P&L account as a revenue expenditure whereas considering the enduring nature of the benefit derived by Vodafone out of the telecom license and the intangible nature of the license, the license fee is treated as a capital expenditure and amortization is allowed over the period of the license agreement. Resultantly, an addition of

₹11,10,99,763/- was made in AY 2011-12. As the company underwent amalgamation, the total sum of the license fee paid by the companies is to be amortized, resulting in higher additions. Besides this, as the special audit for the AYs 2012-13 and 2013-14 is underway, the accounting treatments of the license and their amortizations will also result in huge additions being made.

(iii) With respect to the issue of 3G spectrum fees, Vodafone claimed depreciation on the spectrum it acquired. The revenue here contends that rather than depreciation being claimed on the intangible asset of 3G spectrum, the capital expenditure which includes the interest incurred should be amortized over the life of the spectrum. On this count, an addition of ₹269.63 crores was made in the AY 2011-2012. Besides this, as the special audit for the AYs 2012-13 and 2013-14 is underway, the accounting treatments of the 3G spectrum fee and its amortizations will also result in substantial additions being made.

(iv) With respect to the issue of asset restoration cost obligation, Vodafone claims that it has to incur cost for restoration of leased and shared network sites. Vodafone claims depreciation on the amount so capitalized and reduces profit to that extent. As the asset restoration cost is in the nature of a provision and is not an ascertained liability, it was disallowed. After the amalgamation of the group companies, the quantum of the addition would increase and might get enhanced in light of the special audit which is underway. It is also submitted that an addition of ₹6633988 was made in the AY 2011-12 based on the issue.

(v) With respect to the issue of disallowance of roaming charges, the revenue submitted Vodafone failed to deduct TDS on this count, arguing that this was an automatic process not involving human intervention. In the AY 2011-12, an addition of₹ 142.3 crore was made. The Revenue urges that the fall out of amalgamation of Vodafone group companies is likely to result in a higher addition for the AYs 2012-13, 2013-14 and 2014-15, resulting in substantial demands.

(vi) The revenue urged that Vodafone gave discount to its distributors, of prepaid SIM cards, which is in the nature of commission for which no TDS was deducted. The amount to be disallowed is likely to be much more as compared to a disallowance of ₹50.85 crore made by the revenue in the AY 2011-12.

(vii) With respect to the additions made on account of Section 14A, the Revenue stated that Vodafone made various investments in the AYs 2012-13, 2013-14 and 2014-15. They were used to earn exempt income i.e., dividend income. Since Vodafone failed to include the expenses incurred to earn untaxable income, an addition of ₹1,39,10,000/- was made to the income. Considering that the group has just undertaken a merger and the shares and investments would have been redistributed and/or extinguished, considerable demand is likely to arise in the pending assessment proceedings.

(viii) On penalty levied by the DoT, the Revenue alleged that there have been penalties levied by the Department of Telecom on Vodafone for non-verification of customers etc. The penalty is levied as per the Indian Telegraph Act, 1885. Hence, the penalty is not an allowable

expenditure under Section 37 of the Act. The disallowance of this expenditure would lead to substantial additions for all the, amalgamating companies and would thereby result in creation of a substantial demand for Vodafone.

(ix) With respect to Issue of Disallowance on account of network site rentals, the respondent submits that Vodafone pays network site rentals to the company M/s Indus towers Ltd., to which it has gifted the passive infrastructure assets, which has been held unreasonable by the department. The assesee in the AY 2011-12 had failed to furnish the ledgers duly certified by M/s Indus Towers Ltd, indicating the payments made. Thus, the amounts were not crystallized and an addition of ₹52.2 crore was made. Considering that Vodafone has merged into itself other subsidiary companies, the addition on account of network site rentals will be substantially higher.

(x) It is urged that abundant caution needs be exercised because of the above concerns and refunds can be issued only on the completion of the assessment under Section 143(3) and the correct determination of an assessee's income after thorough scrutiny. The revenue alleged that penalty would be levied on the addition which are made further resulting in huge demand which would have to be paid to the revenue along with applicable interest. This would result in incurring of a substantial tax liability for Vodafone, which given the financial condition of Vodafone as has been admitted by Vodafone itself. Therefore, in light of the above facts, the respondent has taken recourse to Section 281B of the Act. It is submitted by the revenue that the refunds arising out of the appeal effects in the entities VSL for AYs 2007-2008 amounting to ₹3,23,09,941/-, for AY 2008-1009

amounting to ₹355,52,00,613 and VWL for AY 2004-2005 amounting to ₹82,65,79.837 as well as those arising out of the rectification applications for the following assessment years are provisionally attached to protect the interest of the revenue. Therefore, a total attachment of ₹655.67 crores has been made in Vodafone's case under Section 281B of the Act. The respondent contends that a total attachment of ₹655.67 crores has been made under Section 281B of the Act.

(xi) Further, refunds arising out of the following rectification are attached to protect the interest of the revenue. It is stated that for VSL, the attachment of amounts (on account of appeal effects) are ₹3,23,09,941 and ₹355,52,00,613 respectively for AY 2007-08 and 2008-09 and for VWL it is ₹82,65,79,837 (for AY 2004-05). Attachment on account of rectifications for various group companies (VCL, VSPL, HVDL and VEL) is for a total sum of ₹2,14,26,18,683 for various assessment years.

19. The revenue denies allegations of deliberate omission to refund amounts aggregating to ₹4759.74 crores along with applicable interest and states that income tax returns were not processed under Section 143(1). The assessment years under consideration were picked up for scrutiny under Section 143(3) and there is a *prima facie* likelihood of a substantial demand being raised by the Income tax department, as has been done earlier in Vodafone's earlier case. Further, the revenue submitted that in Vodafone's own case for the AY 2011-12 wherein the returned loss was ₹33,93,397 and subsequently, the income determined by the AO was ₹546,64,25,250/-.

20. Mr. Zoheb Hossain, the Revenue's counsel urged that *Tata Teleservices* (supra), is distinguishable. The petitioner there had not undergone retrospective mergers and had incurred substantial losses where no net demand could have been created. Whereas, in the facts of the present case, the returned loss in the AY 2011-12 was assessed as a profit in excess of ₹500 crore by the assessing officer. Tata Teleservices did not face outstanding demands amounting to ₹5,500 crores that were yet to be recovered. The assessments there were not under any special audit which were likely to result in substantial demands. However, this case involves three assessment years, where, revised returns were filed but that are subject to special audit. The shareholding pattern of Tata Teleservices is such that the money could not be repatriated abroad leaving the interest of revenue indefinitely compromised, which is not the case with Vodafone with the actual owner being a foreign company. Therefore, the decision in the *Tata Teleservices case* (supra), cannot be applied to the facts of the present case as such.

21. Counsel for the Revenue contended that for the relevant period under consideration, the Assessing Officer has already issued notice under sub-section (2) of Section 143 within time. As per the then prevailing provision, it was thereafter not necessary for the Assessing Officer to proceed under sub-section (1) of section 143. Further, the ld. Counsel placed reliance on Section 143(1D) of the Act to explain that the refund has not been processed till date. The Ld. Counsel urged that sub-section (1D) of section 143 which starts with a non-obstante clause provided that notwithstanding anything contained in sub-section (1), the processing of the return shall not be necessary before the expiry of the period specified in the second proviso where a notice has been issued to the assessee under Section 143 (2). The proviso to Section 143 (1D) provided that such return shall be processed before the issuance of an order under sub-section

(3). Therefore, Section 143 (1D) overrides Section 143 (1). Therefore, the counsel submitted that under section 143(1D) of the Act, the processing of return shall not be necessary, where notice has been issued under section 143(2) of the Act.

22. The Counsel placed on record letter F.No.ACIT/C-26(2)/2018-19/216 dated 23.07.2018. It is in response to the multiple communications by the assessee for expeditious processing of returns for different AYs. The order informs that the cases are pending for scrutiny as follows; for the AY 2012-13 and 2013-14, the assessment is under special audit and for the AY 2014-15, the assessee approached the AAR and lastly, returns for AYs 2015-16 and 2016-17, are under scrutiny. The assessment years for which request has been made to process the return under section 143(1) are already under scrutiny for the various AYs. Therefore, exercising the power under Section 143(1D), the Assistant Commissioner declined the processing of returns under Section 143(1). Further, the case is under compulsory scrutiny for AY 2017-2018, exercising the power Section 241A, the Assistant Commissioner declined the processing of returns under section 143(1). The relevant portion of the letter dated 23.07.2018 is extracted here under:

> "*Considering pending special audit, pending scrutiny, opening demands of amount more than 4500 crore, it will be prejudicial to the interest of the revenue to process the returns without completion of the pending scrutiny cases. Therefore, exercising powers under section 143(1) and under section 241A of the Act, the undersigned decline the processing of returns under section 143(1). The above decision has been taken after taking into cognizance the order of Honourable High Court of Delhi in TATA TELESERVICES LIMITED versus CENTRAL BOARD OF DIRECT TAXES & ANR dated 11-05-2016 in para 24 of the judgment:*

> *"The question whether such return should be processed will have to be decided by the AO concerned exercising his discretion in terms of Section 143(1D) of the Act."*

23. Mr. Hossain placed reliance on the decision of this court in the case of *Indus Towers Limited Vs. Union of India & Ors (W.P.10293/2017)*, where the writ petition was withdrawn with liberty to approach the Commissioner by way of revision petition under Section 264 of the Act against the impugned order passed by the assessing officer refusing to issue refund.

24. It was pointed out that no doubt *Tata Teleservices* (supra) quashed the instructions issued by the CBDT. However, it still gave the revenue the ability to exercise the discretion provided for in Section 143(1D). The relevant portion of the judgment:

> *"The Court is of the view that the impugned Instruction No.1 of 2015 dated 13th January 2015 issued by the CBDT is unsustainable in law and it is hereby quashed. It is directed that the said instruction shall not hereafter be relied upon to deny refunds to the Assessees in whose cases notices might have been issued under Section 143(2) of the Act. The question whether such return should be processed will have to be decided by the AO concerned exercising his discretion in terms of Section 143 (1D) of the Act."*

25. The revenue contends that the financial condition of Vodafone cannot be a ground to discount its tax liability. In the facts of the present case, the interest of the revenue is to be protected as huge demands are outstanding which are stayed by the appellate forums. For the AY 2011-12, Vodafone chose to approach the court in writ jurisdiction against the orders of the dispute resolution panel instead of availing the available remedy of approaching the ld. ITAT. Further, Counsel for the revenue urged that any refunds as determined

only after the completion of assessment of income shall be issued to Vodafone in accordance with law.

Analysis and Conclusions

Relevant provisions

26. Section 143 (1) of the Act states that every return made under Section 139 of the Act or filed in response to a notice under Section 142 (1) of the Act, would be processed in the following manner:

> ***"143.*** *(1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:—*
>
> *(a) the total income or loss shall be computed after making the following adjustments, namely:—*
>
> *(i) any arithmetical error in the return;* [92]*[***]*
>
> *(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;*
>
> [93]*[(iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;*
>
> *(iv) disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return;*
>
> *(v) disallowance of deduction claimed under sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE, if the return is furnished beyond the due date specified under sub-section (1) of section 139; or*
>
> *(vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:*

Provided *that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:*

Provided further *that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made:]*

[94]***[Provided also*** *that no adjustment shall be made under sub-clause (vi) in relation to a return furnished for the assessment year commencing on or after the 1st day of April, 2018;****]***

(b) the tax [95]*[, interest and fee], if any, shall be computed on the basis of the total income computed under clause (a);*

(c) the sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of the tax [95]*[, interest and fee], if any, computed under clause (b) by any tax deducted at source, any tax collected at source, any advance tax paid, any relief allowable under an agreement under section 90 or section 90A, or any relief allowable under section 91, any rebate allowable under Part A of Chapter VIII, any tax paid on self-assessment and any amount paid otherwise by way of tax* [96]*[, interest or fee];*

(d) an intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to, the assessee under clause (c); and

(e) the amount of refund due to the assessee in pursuance of the determination under clause (c) shall be granted to the assessee:

Provided *that an intimation shall also be sent to the assessee in a case where the loss declared in the return by the assessee is adjusted but no tax* [96]*[, interest or fee] is payable by, or no refund is due to, him:*

Provided further *that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the return is made.*

Explanation.—For the purposes of this sub-section,—

(a) "an incorrect claim apparent from any information in the return" shall mean a claim, on the basis of an entry, in the return,—

(i) of an item, which is inconsistent with another entry of the same or some other item in such return;

(ii) in respect of which the information required to be furnished under this Act to substantiate such entry has not been so furnished; or

(iii) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction;

(b) the acknowledgement of the return shall be deemed to be the intimation in a case where no sum is payable by, or refundable to, the assessee under clause (c), and where no adjustment has been made under clause (a).

(1A) For the purposes of processing of returns under sub-section (1), the Board may make a scheme for centralised processing of returns with a view to expeditiously determining the tax payable by, or the refund due to, the assessee as required under the said sub-section.

(1B) Save as otherwise expressly provided, for the purpose of giving effect to the scheme made under sub-section (1A), the Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act relating to processing of returns shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in that notification; so, however, that no direction shall be issued after the 31st day of March, 2012.

(1C) Every notification issued under sub-section (1B), along with the scheme made under sub-section (1A), shall, as soon

as may be after the notification is issued, be laid before each House of Parliament.

[(1D) Notwithstanding anything contained in sub-section (1), the processing of a return shall not be necessary, where a notice has been issued to the assessee under sub-section (2):

Provided that the provisions of this sub-section shall not apply to any return furnished for the assessment year commencing on or after the 1st day of April, 2017.]"

[(2) Where a return has been furnished under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer or the prescribed income-tax authority[99], as the case may be, if, considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, shall serve on the assessee a notice requiring him, on a date to be specified therein, either to attend the office of the Assessing Officer or to produce, or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return:

***Provided** that no notice under this sub-section shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished.]*

(3) [1][On the day specified in the notice issued under] sub-section (2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment:

***Provided** that in the case of a—*

(a) research association referred to in clause (21) of section 10;

(b) news agency referred to in clause (22B) of section 10;

(c) association or institution referred to in clause (23A) of section 10;

(d) institution referred to in clause (23B) of section 10;

(e) fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via) of clause (23C) of section 10, which is required to furnish the return of income under sub-section (4C) of section 139, no order making an assessment of the total income or loss of such research association, news agency, association or institution or fund or trust or university or other educational institution or any hospital or other medical institution, shall be made by the Assessing Officer, without giving effect to the provisions of section 10, unless—

(i) the Assessing Officer has intimated the Central Government or the prescribed authority the contravention of the provisions of clause (21) or clause (22B) or clause (23A) or clause (23B) or sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, as the case may be, by such research association, news agency, association or institution or fund or trust or university or other educational institution or any hospital or other medical institution, where in his view such contravention has taken place; and

(ii) the approval granted to such research association or other association or fund or trust or institution or university or other educational institution or hospital or other medical institution has been withdrawn or notification issued in respect of such news agency or fund or trust or institution has been rescinded :

***Provided further** that where the Assessing Officer is satisfied that the activities of the university, college or other institution referred to in clause (ii) and clause (iii) of sub-section (1) of section 35 are not being carried out in accordance with all or any of the conditions subject to which*

such university, college or other institution was approved, he may, after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned university, college or other institution, recommend to the Central Government to withdraw the approval and that Government may by order, withdraw the approval and forward a copy of the order to the concerned university, college or other institution and the Assessing Officer:

Provided also *that notwithstanding anything contained in the first and the second provisos, no effect shall be given by the Assessing Officer to the provisions of clause (23C) of section 10 in the case of a trust or institution for a previous year, if the provisions of the first proviso to clause (15) of section 2 become applicable in the case of such person in such previous year, whether or not the approval granted to such trust or institution or notification issued in respect of such trust or institution has been withdrawn or rescinded.*

[2]***[****(3A) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of making assessment of total income or loss of the assessee under sub-section (3) so as to impart greater efficiency, transparency and accountability by—*

(a) eliminating the interface between the Assessing Officer and the assessee in the course of proceedings to the extent technologically feasible;

(b) optimising utilisation of the resources through economies of scale and functional specialisation;

(c) introducing a team-based assessment with dynamic jurisdiction.

(3B) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (3A), by notification in the Official Gazette, direct that any of the provisions of this Act relating to assessment of total income or loss shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:

Provided that *no direction shall be issued after the 31st day of March, 2020.*

*(3C) Every notification issued under sub-section (3A) and sub-section (3B) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.**]***

(4) Where a regular assessment under sub-section (3) of this section or section 144 is made,—

(a) any tax or interest paid by the assessee under sub-section (1) shall be deemed to have been paid towards such regular assessment ;

(b) if no refund is due on regular assessment or the amount refunded under sub-section (1) exceeds the amount refundable on regular assessment, the whole or the excess amount so refunded shall be deemed to be tax payable by the assessee and the provisions of this Act shall apply accordingly.

27. Section 241A was inserted by the Finance Act,2017, w.e.f. 01.04.2017 which reads as under:

"241A. Withholding of refund in certain cases.--For every assessment year commencing on or after the 1st day of April, 2017, where refund of any amount becomes due to the assessee under the provisions of sub-section (1) of section 143 and the Assessing Officer is of the opinion, having regard to the fact that a notice has been issued under sub-section (2) of section 143 in respect of such return, that the grant of the refund is likely to adversely affect the revenue, he may, for reasons to be recorded in writing and with the previous approval of the Principal Commissioner or Commissioner, as the case may be, withhold the refund up to the date on which the assessment is made."

28. It is noteworthy that till 01.06.2001, Section 241 of the Act enabled the Assessing Officer to withhold any refund under certain circumstances. Section

241, after the amendment of 01.04.1989 till it was withdrawn w.e.f. 01.06.2001 read as under:

> *"**Power to withhold refund in certain cases.***
>
> *241. Where refund of any amount becomes due to the assessee as a result of an order under this Act or under the provisions of sub-section (1) of section 143 after a return has been made under section 139 or in response to a notice under sub-section (1) of section 142 and the Assessing Officer is of the opinion, having regard to the fact that-*
>
> *(i) a notice has been issued, or is likely to be issued, under sub-section (2) of section 143 in respect of the said return; or*
>
> *(ii) the order is the subject-matter of an appeal or further proceeding; or*
>
> *(iii) any other proceeding under this Act is pending, that the grant of the refund is likely to adversely affect the revenue, the Assessing Officer may, with the previous approval of the Chief Commissioner or Commissioner, withhold the refund till such time as the Chief Commissioner or Commissioner may determine."*

29. In the facts of the present case, the issue canvassed is on the interpretation of Section 143 (1D) of the Act. It is first necessary to refer to the statutory provisions and thereafter consider the effect of such provisions on Vodafone's request for refund for the said assessment years.On reading of the Section 143 of the Act, it is apparent that when returns are filed either under Section 139 or pursuant to a notice under Section 142 (1), Section 143(1) mandates that the returns shall be processed in the manner prescribed in clauses (a) to (e) thereof. The processing of a return thus involves determination of total income or loss, tax and interest, if any, payable and sum payable by, or the amount of refund due to the assessee. Section 143(1)(d) stipulates that an

intimation shall be prepared or generated and sent to the assessee specifying the sum determined payable by, or the amount of refund due to the assessee under clause(c). Section 143 (1) (e) provides that the amount of refund due in pursuance of the determination under clause (c) shall be granted to the assessee. A reading of proviso to Section 143 (1) reveals that it mandates that the intimation as provided in Section 143 (1) (d) should be issued before the expiry of one year from the end of the financial year in which the return is made. Before proceeding to Section 143 (1D) as it stood at the relevant time, it is essential to refer to Section 143 (2) and (3). Sub-section (2) contemplates issuance of a notice in the contingency covered by the said provision. Sub-section (3) provides that once such a notice is served, after following the procedure laid, the Assessing Officer is required to pass an order in writing making an assessment of the total income or loss and determine the sum payable by the assessee or refund of any amount due to him on the basis of the assessment. It is also relevant to notice that whether it is the processing of a return under Section 143 (1) or an order under Section 143 (3) is subject to the same time limit, i.e. Section 153 (1).

30. To understand the relevance of the insertion of Section 143(1D) by the Finance Act, 2012, with effect from 1st July, 2012, the relevant portion of the Finance Act, 2012 is extracted hereunder for ready reference:

> ***"Amendment of Section 143.***
>
> *61. In section 143 of the Income-Tax Act,—*
>
> *(a) after sub-section (1C), the following sub-section shall be inserted with effect from the 1st day of July, 2012, namely:—*
>
> *"(1D) Notwithstanding anything contained in sub-section (1), the processing of a return shall not be necessary, where a notice has been issued to the assessee under sub-section (2)."*

31. The provision begins with a *non-obstante* clause, i.e. that notwithstanding anything contained in Section 143 (1), the processing of return shall not be necessary where a notice has been issued to the assessee under sub-section (2) of section 143. The Memorandum to the Finance Bill, 2012 gives the explanation for the insertion of sub-section (1D). The relevant portion is extracted hereunder for reference:

> *"**Processing of return of income where scrutiny notice issued***
>
> *Under the existing provisions, every return of income is to be processed under sub-section (1) of section 143 and refund, if any, due is to be issued to the taxpayer. Some returns of income are also selected for scrutiny which may lead to raising a demand for taxes although refunds may have been issued earlier at the time of processing. It is therefore proposed to amend the provisions of the Income-tax Act to provide that processing of return will not be necessary in a case where notice under sub–section (2) of section 143 has already been issued for scrutiny of the return. This amendment will take effect from the 1st day of July, 2012.*"

32. In this regard, the CBDT issued instructions dated 13th January, 2015 which stated that the provision of sub-section (1D) was enacted to prevent the grant of refund after processing as the scrutiny proceedings may result in demand for taxes on finalization of the assessment subsequently. Thus, in short, the instructions provided that in no case, the return can be processed where a notice under Section 143 (2) was issued. This instruction was a subject matter of challenge before this court in *Tata Teleservices*(supra).The relevant discussion in the decision are relevant read thus:

> *"23. 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) of the Act. If it the legislative intent was that the return would not be processed at all once a notice is issued under Section 143(2) of the Act, 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 of the Act, 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) of the Act, it will be a matter the discretion of the concerned AO whether he should process the return.

24. Consequently, the Court is of the view that the impugned Instruction No.1 of 2015 dated 13th January, 2015 issued by the CBDT is unsustainable in law and it is hereby quashed. It is directed that the said instruction shall not hereafter be relied upon to deny refunds to the Assessees in whose cases notices might have been issued under Section 143(2) of the Act. The question whether such return should be processed will have to be decided by the AO concerned exercising his discretion in terms of Section 143(1D) of the Act."

33. This view of the court was relied upon by a Division Bench of the Bombay High court in *Group M. Media India Pvt. Ltd.* (supra). The relevant paras of the judgment are extracted hereunder for ready reference:

"9. The only contention on behalf of the Revenue to oppose the petition is that as the Assessing Officer has time available to process the refund till 31st March, 2017, no mandamus can be issued till 31st March, 2015. We repeatedly asked of Mr. Mohanty, the learned Counsel for the Revenue, if there was any reason why the return could not be processed before 31st March, 2017. No reasons are forthcoming from the Revenue as to why the Assessing Officer will not able to dispose of the application for refund or process the return under Section 143(1) of the Act before 31st March, 2017. This conduct / stand of the Assessing Officer, to say the least, is most disturbing in the

context of the fact that Vodafones have been seeking refund since April, 2016. First, he does not deem it proper to inform the petitioner in writing why he cannot deal with the application and after the petitioner moves the Court, the stand taken is that no direction can be given to him till 31st March, 2017 which is the last date to process the return under Section 143(1) of the Act. This attitude on the part of the Assessing Officer is preposterous.

10. The action of the officer on the ground urged seems to be in complete variance with the higher echelons of administration of the tax administration being an assessee friendly regime. In fact, the CBDT has itself issued Instruction No. 7/2012, dated 1st August, 2002 wherein they have specifically directed the officers of the Revenue to process all returns in which refunds are payable expeditiously. Similarly, as late as in 2014 in the Citizen's Charter issued by the Income Tax Department in its vision statement states that the Department aspires to issue refunds along with interest under Section 143(1) of the Act within 6 months from date of electronically filing the returns. In this case, the return was filed on 29th November, 2015, yet there is no reason why the Assessing Officer has not processed the refund and taken a decision to grant or not grant a refund under Section 143(1D) of the Act. This attitude on the part of the Assessing Officer leaves us with a feeling (not based on any evidence) that the Officers of the Revenue seem to believe that it is not enough for the assessee to please the deity (Income Tax Act) but the assessee must also please the priest (Income Tax Officer) before getting what is due to him under the Act. The officers of the State must ensure that their conduct does not give rise to the above feeling even remotely.

11. Lastly, we must for the benefit of the Revenue reiterate that our powers under Article 226 of the Constitution are very wide for the purpose of doing justice. 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, Article 226(1) of the Constitution empowers the Court to issue

directions, orders or writs, including writs in the nature of habeas corpus, mandamus, certiorari or any of them. Therefore, in view of the conduct of the Assessing Officer, we are compelled to direct the Assessing Officer to consider and process the petitioner's representation dated 12th August, 2016 and dispose of the same as expeditiously as possible within a period of 8 weeks from today."

34. In *Uttar Bihar Gramin Bank vs. The Principal Commissioner of Income Tax, Muzaffarpur & Ors.* (2018) 303 CTR (Pat) 303, the Patna High Court disposed of the writ petition giving the liberty to the petitioner to approach the authority as the matter was pending for scrutiny assessment.

35. In *Corrtech International Pvt. Ltd. vs. Deputy Commissioner of Income Tax* [2018] 401 ITR 355(Guj), the Gujarat High Court explained the application of Section 143(1D) in co-relation to Section 241A in similar cases. The relevant paras are extracted hereunder for ready reference:

"13. If we analyze section 143 of the Act as it existed prior to the amendment of the Finance Act 2017, the return filed by the assessee would be processed by the Assessing Officer as provided under sub-section (1) of Section 143 permitting him to make adjustments and compute the tax or refund intimating to the assessee the culmination of such exercise and granting the refund if due to him in terms of clause (e) of sub-section (1) of section 143. The first proviso to sub-section (1) also required the Assessing Officer to send an intimation to the assessee in case where the loss declared in the return by the assessee is adjusted but no tax or interest is payable by or no refund is due to him. As per the further proviso to sub-section (1), no intimation under sub-section (1) would be sent after the expiry of one year from the end of the relevant assessment year in which the return is filed.

Sub-section (1D) of section 143 which starts with a non-obstante clause provided that notwithstanding anything contained in sub-section (1), the processing of the return

shall not be necessary before the expiry of the period specified in the second proviso where a notice has been issued to the assessee under sub-section (2) of section 143. Proviso to this sub-section (1D) provided that such return shall be processed before the issuance of an order under sub-section (3).

14. As per the said provisions, therefore, the Assessing Officer could process the return under sub-section (1) of section 143 before the expiry of one year from the end of the relevant assessment year in which the return was filed after which, no such adjustment would be permissible. Under sub-section (1D), however, if notice under sub-section (2) of section 143 was issued to the assessee, it would not be necessary for the Assessing Officer to process the return under sub-section (1) within the time limit provided under the further proviso. However, if he desired to process the return under sub-section (1) the same would have to be done before issuance of an order under sub-section (3) of section 143.

15. A combined reading of the said provisions and in particular, sub-section (1D) of section 143 would demonstrate that once a notice under sub-section (2) of section 143 is issued, it would be discretionary for the Assessing Officer to process the return under section 143(1). The time limit envisaged in the further proviso to sub-section (1) would not apply but that the same can be done only before issuance of the order of assessment under sub-section (3).

16. Under such provision, therefore, it would be open for the Assessing Officer to process the return under section 143(1) and, if the culmination of such exercise is to deny a refund to the assessee, send such an intimation, as provided, under the proviso to sub-section (1). Once however the time frame envisaged in the further proviso to sub-section (1) expires and is not extended by virtue of the operation of sub-section (1D) of section 143, there would be no scope thereafter for the Assessing Officer to withhold the refund arising out of the return filed by the assessee.

17. This position would become clear if we compare the provisions of section 143(1D) as amended by the Finance Act, 2017 read with newly inserted Section 241A. Under the new sub-section (1D) the legislature provides that notwithstanding anything contained in sub-section (1) the processing of return would not be necessary where a notice has been issued to an assessee under sub-section (2). This would make it clear that once notice under section 143(2) has been issued, the Assessing Officer shall not process the return under section 143(1). The original proviso to sub-section (1D) has been substituted by a new proviso under which it is clarified that the proviso under said sub-section shall not apply to any return furnished for the assessment year commencing on or after 01.04.2017. Section 241A which was inserted simultaneously, now enables the Assessing Officer to withhold the refund in favour of the assessee which becomes due in terms of sub-section (1) of section 143 if he is of the opinion that having regard to the fact that a notice has been issued under sub-section (2) of section 143 that the grant of refund is likely to adversely affect the Revenue, he would, however, do so by recording reasons in writing and with previous approval of the Principal Commissioner or Commissioner and withhold such refund till the date the assessment is made. We may recall that Section 241 which was omitted w.e.f. 01.06.2001 previously enabled the Assessing Officer to withhold the refund which becomes due and payable in terms of sub-section (1) of section 143 under certain circumstances including in a situation where a notice has been issued or is likely to be issued under sub-section (2) of section 143 of the Act and the Assessing Officer is of the opinion that the grant of refund is likely to adversely affect the Revenue.

18. The provisions which were applicable in case of the petitioner-assessee post deletion of section 241 of the Act and prior to insertion of section 241A of the Act would authorize the Assessing Officer to withhold the refund arising out of a return filed by the assessee if an intimation was sent under sub-section (1) of section 143 after completing the processing of the return as envisaged therein. If notice under sub-section (2) of section 143 was issued, such time limit for processing would get extended

till the passing of the order of assessment. However, the Revenue cannot contend that even though no intimation under sub-section (1) of section 143 was issued within the time envisaged and no notice under sub-section (2) of section 143 was issued, the Assessing Officer can sit tight over the refund claimed by the assessee arising out of the return filed. Mere issuance of notice under section 143(2) of the Act claiming extended period for processing refund under section 143(1), would not be sufficient to withhold refund.

21. Coming back to the facts on hand, so far as the assessment of the year 2015-16 is concerned, the return was filed on 29.09.2015 for which, the time limit under the normal provision of sub-section (1) of section 143 of the Act for processing the return is over long back. Even though as discussed earlier, the Assessing Officer having issued notice under sub-section (2) of section 143 of the Act, he would get an extended time for proceeding under sub-section (1) as highlighted by the Delhi High Court in case of Tata Teleservices Ltd. (supra) and by the Bombay High Court in case of Group M. Media India Pvt. Ltd. Mumbai (supra), it would be wholly inequitable for the Assessing Officer to merely sit over the petitioner's request for refund citing the availability of time up to the last date of framing the assessment under sub-section (3) of section 143. At least once the time limit envisaged in the proviso to sub-section (1) of section 143 is over without the Assessing Officer processing the return under sub-section (1) and even though notice under sub-section (2) of section 143 may have been issued, the Assessing Officer, by all reasonable interpretation of the statutory provisions would be expected to respond to the assessee's request for either granting refund or indicating that in terms of the adjustments impermissible under sub-section (1) of section 143, such refund or part thereof was not available to the assessee. We simply cannot accept the interpretation of the counsel for the Revenue that once a notice under sub-section (2) of section 143 is issued, the suspension of the refund arising out of the return filed by the assessee would be automatic and till the passing of the order of assessment under sub-section (3) of section 143. The reasonable

interpretation of the statute and the situation in such a case would be, to expect the Assessing Officer to take up an expeditious disposal of the processing of return under sub-section (1) of section 143 of the Act at least once the assessee requests for release of the refund, and send as an intimation to the assessee if he wishes to withhold the same.

22. Under the circumstances, the respondent-Assessing Officer is directed to complete the process of the assessee's return under sub-section (1) of section 143 of the Act latest by 31.10.2017. If any refund arises out of said exercise, grant the same to the petitioner as per the statutory provisions. Insofar as the assessment of the year 2016-17 is concerned, the time for processing the return under sub-section (1) of section 143 read with proviso is not yet over. We do not propose to issue any direction in this respect for curtailing the statutory time limit envisaged therein.

23. With these directions, the petition is disposed of."

36. In the case of *Rayala Corporation Pvt. Ltd. vs. Assistant Commissioner of Income Tax,* [2014] 363 ITR 630 (Mad), the Madras High Court held as under :

"46. In terms of sub-section (1D) inserted in Section 143 by Finance Act 2012, w.e.f., 01.07.2012, notwithstanding anything in sub-section (1) of Section 143 of the I.T. Act, processing of return shall not be necessary, where a notice is issued under Section 143(2) of the I.T. Act. It is only under Section 143(2) of the I.T. Act, the role of the Assessing Officer comes in. The intimation given under section 143(1)(a) of the I.T. Act is without prejudice to the provisions of section 143(2) of the I.T. Act and though the intimation is deemed to be a demand, it does not foreclose the right of the Assessing Officer to proceed under Section 143(2) of the I.T. Act. It is to be noted that the word Assessing Officer is conspicuously absent in Section 143(1) of the I.T. Act. The resultant position is made clear, when we read Section 143(3) of the I.T. Act. Thus the process of assessment in the real sense of the term commences only

> *when notice is issued under Section 143(2) of the I.T. Act. Here too notice has to be served on the Assessee within the period of one year from the end of the month, in which the return is furnished. Thus, if no notice is served within the stipulated period of twelve months, the assessment proceedings under section 143 of the I.T. Act come to an end. Thus, though technically there is no assessment framed in such a case, yet the proceedings as far as section 143 of the I.T. Act is concerned, the same stand terminated. Though the procedure of centralised processing under sub-section 1A of Section 143(1) of the I.T. Act finds place under the heading "Assessment" under section 143 of the I.T. Act, there appears to be a clear distinction and dichotomy in procedure. Between April 1, 1998, and May 31, 1999, sending of an intimation under section 143(1)(a) of the I.T. Act, was mandatory*."

37. Explanatory Notes to the provisions of the Finance Act, 2017 issued by the CBDT, by Circular No.2/2018 dated 15.02.2018 explained the insertion of Section 241A and co-relation with Section 143(1D). The relevant portion is extracted hereunder for reference:

> *"59. Processing of return within the prescribed time and enable withholding of refund in certain cases.*
>
> *59.1 Before amendment by the Finance Act, 2016, the provisions of sub-section (1D) of section 143 of the Income-tax Act specify that the processing of a return shall not be necessary, where a notice has been issued to the assessee under sub-section (2) of the said section.*
>
> *59.2 The said sub-section was amended vide Finance Act, 2016 and it was provided that with effect from assessment year 2017-18, processing under section 143(1) of the Income-tax Act is to be done before passing of assessment order.*
>
> *59.3 In order to address the grievance of delay in issuance of refund in genuine cases, a proviso has been inserted in section 143(1D) of the Income-tax Act specifying that the provisions of the said sub-section shall cease to apply in*

respect of returns furnished for assessment year 2017-18 and onwards.

59.4 However, to address the concern of recovery of revenue in doubtful cases, a new section 241A has been inserted in the Income-tax Act to provide that, for the returns furnished for assessment year commencing on or after 1st April, 2017, where refund of any amount becomes due to the assessee under section 143(1) of the Income-tax Act and the Assessing Officer is of the opinion that grant of refund may adversely affect the recovery of revenue, he may, for the reasons recorded in writing and with the previous approval of the Principal Commissioner or Commissioner, withhold the refund up to the date on which the assessment is made.

59.5 Applicability: These amendments take effect from 1st April, 2017 and accordingly apply to returns furnished for assessment year 2017-18 and subsequent years."

38. Further, *Report of the Income Tax Simplification Committee* submitted by the Chairman, Justice R.V. Easwer (Retired), proposed for deletion of Section 143(1D):

"8.1 PROPOSED DELETION OF SECTION 143(1D) – AVOIDING UNDESIRABLE DELAY IN ISSUE OF REFUNDS

It is desirable that any refund due to an assessee, under the Income Tax Return filed by him comes to be processed and issued to him within a stipulated time frame of maximum six months from the end of the month in which the tax return is filed. In fact, in the recent past, it has been the endeavour of the Income-tax Department to issue prompt and timely refunds within this time frame, which is keeping in line with its commitment made under the Citizen's Charter. However, the provision as introduced under Section 143(1D), with effect from 1-7-2012, providing that the processing of a return shall not be necessary, where a notice has been issued to the assessee under Section 143(2), has proved to be a bottle-neck in the commitment of the Department to issue timely tax refunds. It needs to be

> *appreciated that the time limit for finalization of assessment in a case, where notice for scrutiny has been issued under Section 143(2), could extend upto 32 months or even 40 months (in a case of International Transfer Pricing) from the date of filing tax return. In such cases, it is grossly unfair to the assessee that the refund due to him under his tax return and payable within six months is withheld on the pretext that no processing of the tax return has taken place. 8.2 It is, therefore, recommended that Section 143(1D) should be deleted with effect from 1-7-2016."*

39. A reading of the above judgements and the relevant provisions, clearly shows that Section 143(2) empowers, the AO to issue notice to the assessee to produce documents or other evidence, to prove the genuineness of the income tax return. Under section 143(1D) of the Act as introduced by the Finance Act, 2012 processing of a return under Section 143(1)(a) is not necessary where a notice has been issued under Section 143(2) of the Act. This provision has now 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.

40. The assessee's argument in these proceedings is that once the one year period in proviso to Section 143 (1) ends, the return – and whatever calculations are contained in it, with respect to tax liability as well as the consequential refunds, become final, subject to only one event: issuance of notice under Section 143 (2).

41. To this court, it appears that the net effect of *Tata Teleservices* (supra) is that the revenue cannot be inactive, in cases where the assessee claims refund, and the one year period is over (under proviso to Section 143 (1)) ends. The AO

has to apply his mind to consider whether the facts and circumstances of the case, warrant some or all of the refund of the assessee's amounts, or if all of it needs to be withheld, whenever the assessee presses for refund. This exercise should be undertaken promptly, keeping in mind the time limit under the normal provision of Section 143 (1) expires. This court held in *Tata Teleservices Ltd.* (supra) and the Bombay High Court in case of *Group M Media India (P) Ltd*. (supra) that it would be wholly inequitable for the Assessing Officer to merely sit over the petitioner's request for refund citing the availability of time up to the last date of framing the assessment under Section 143 (3). The proper interpretation of the statute and the situation in such a case would be, the AO should take up an expeditious disposal of the question once the assessee requests for release of the refund.

42. *Commissioner Of Income-Tax v Gujarat Electricity Board* (2003) 260 ITR 84 (SC) is an authority for the proposition that once a regular assessment commences with issuance of notice, under Section 143 (2) the summary proceeding of an intimation is not feasible. The Supreme Court held as follows:

> *"5. Even otherwise, the view taken by the Gujarat High Court seems to be correct on principle. There is no dispute that Section 143 (1) (a) of the Act enacts a summary procedure for quick collection of tax and quick refunds. Under the scheme if there is a serious objection to any of the orders made by the Assessing Officer determining the income, it is open to the assessee to ask for rectification under Section 154. Apart therefrom, the provisions Section 143 (1) (a) (i) indicate that the intimation sent under Section 143 (1) (a) shall be without prejudice to the provisions of Sub-section (2). The Legislature, therefore, intended that, where the summary procedure under Sub-section (1) has been adopted, there should be scope available for the Revenue, either suo motu or at the instance of the assessee to make a regular assessment under Sub-section (2) of Section 143. The converse is not*

> *available; a regular assessment proceeding having been commenced under Section 143 (2), there is no need for a summary proceeding under Section 143 (1) (a).”*

43. Earlier, the Calcutta High Court, in *Modern Fibotex India Ltd. & Anr. vs Deputy Commissioner of Income Tax,* 1995 (212) ITR 496 (Cal) had explained the constraint of the revenue, in dealing with a request based on adjustments under Section 143(1)(a):

> *“59. In my view, apart from the concession in this case, generally, this is the third limitation on exercise of power under 143 (1) (a) of the Act, namely, once the notice under 143 (2) has been issued there is no scope for the authorities either to make prima facie adjustment on the basis of the return as filed or issue an intimation under 143(1)(a)”*

44. Now in this case, acknowledgement or intimation had not been sent by the AO. There is no doubt that the period of one year indicated in the second proviso to Section 143 (1). However, Section 143 (1D) begins with a *non-obstante* clause that overbears that provision. *Tata Teleservices* (supra) and the Bombay High Court ruling in *Group M Media India* (supra) state that the fact that a regular assessment is resorted to, does not *ipso facto* mean that in every case, the AO has to refuse refunds or there is an automatic bar to refunds. The AO has to apply his mind and make an order keeping in perspective the facts of the case.

45. In this case, the revenue has relied on an order dated 28-7-2018, which *inter alia*, stated that “*Considering pending special audit, pending scrutiny, opening demands of amount more than 4500 crore, it will be prejudicial to the interest of the revenue to process the returns without completion of the pending scrutiny cases. Therefore, exercising powers under section 143(1) and under section 241A of the Act, the undersigned decline the processing of returns under*

section 143(1).” The senior counsel for Vodafone had attacked the reliance on this order, stating that it was made later. However that is an aspect this court cannot go into. Facially, the order contains reasons. Therefore, unlike *Tata Teleservices*, a reasoned order was made; that decision was based on a circular, which fettered the AO’s discretion. Therefore, the CBDT circular was set aside.

46. In the facts of the present case, for the AYs in consideration, for AY 2014-15, the petitioner has approached the AAR and for AYs 2015-16 and 2017-18, scrutiny assessments are pending before the AO. The AO has exercised discretion under Section 143(1D) not to process the returns considering the fact that substantial demand has been raised on completion of scrutiny assessment of earlier years.

47. The petitioner has undertaken two schemes of amalgamation involving merger of certain group companies in order to restructure its business operations and increase operational efficiencies. In light of the above fact, assessments for the AY 2012-13 and 2013-14 are under special audit and any demand that would arise from the processing of the said assessment years are to be allowed to be adjusted against the refund claims. The petitioner’s position is that it is not in a good financial condition.

48. There is some merit in the revenue’s argument that substantial outstanding demand are pending against the petitioner. Further, the likelihood of substantial demands upon the assessee after the scrutiny for the AYs is completed, cannot be ruled out. The Revenue should have the right to adjust the demands against the refunds that may arise but have not yet been determined due to ongoing scrutiny proceedings.

49. As far as the argument that the expiry of the one year period, *per* second proviso to Section 143 (1) resulting in finality of the *intimation of acceptance,*

this court is of opinion that the deeming provision in question, i.e. Section 143 (1) (d) only talks of two eventualities: "*shall be deemed to be the intimation in a case where no sum is payable by, or refundable to, the assessee under clause (c), and where no adjustment has been made under clause (a).*" Secondly, that intimation or acknowledgement cannot confer any greater right than for the assessee to ask the AO to process the refund and make over the money; it is up to the AO- wherever the possibility of issuing a notice under Section 143 (2) exists, or where such notice has been issued, to *apply his mind, and decide whether given the nature of the returns and the potential or likely liability, the refund can be given.* It does not mean that when an assessment -pursuant to notice under Section 143 (2) is pending, such right to claim refund can accrue. This court also recollects the decision of the Supreme Court in *Deputy Commissioner of Income Tax v Zuari Estate Development & Investment Co Ltd* 2015 (15) SCC 248 which held that an intimation under Section 143 (1) is not to be considered as an assessment.

50. For the above reasons this court is of the opinion that there is no merit in the petitioner's argument. The writ petition fails and is accordingly dismissed. No costs.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

DECEMBER 14, 2018