REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No.2377 of 2020
Arising out of SLP(Civil) No.1169 of 2019

VODAFONE IDEA LTD.
(EARLIER KNOWN AS VODAFONE
MOBILE SERVICES LIMITED) ..... APPELLANT(S)

VERSUS

ASSISTANT COMMISSIONER OF
INCOME TAX CIRCLE 26 (2) & ANR. .....RESPONDENT(S)

J U D G M E N T

Uday Umesh Lalit. J.

1. Leave granted.

2. This appeal arises out of the final judgment and order dated 14.12.2018 passed by the High Court[1] in Writ Petition (Civil) No.2730 of 2018 preferred by the appellant herein.

3. The facts leading to the filing of this appeal, in brief, are as under:-

[1] High Court of Delhi at New Delhi

A] The appellant-Vodafone Idea Ltd. (earlier known as Vodafone Mobile Services Ltd or VMSL for short) is engaged in providing telecommunication services in different circles.

a) By amalgamation which came into effect on 01.04.2011, four group entities: Vodafone Cellular Ltd., Vodafone Digilink Ltd., Vodafone East Ltd. and Vodafone South Ltd. got merged in VMSL.

b) By second scheme of amalgamation, two other group entities: Vodafone Spacetel Ltd. and Vodafone West Ltd. got merged in VMSL w.e.f. 01.04.2012.

c) While the proceedings in the instant case were pending, by scheme of arrangement[2] between VMSL and Idea Cellular Ltd. Vodafone Idea Ltd. - the resultant company assumed all the rights and liabilities of the amalgamating/transferor companies.

Most of the factual developments in the matter, as set out hereafter, were before said scheme of arrangement.

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[2] Formulated by the Order dated 19.1.2018 passed by National Company Law Tribunal, Mumbai and order dated 11.1.2018 by National Company Law Tribunal, Ahmedabad.

B] For AY[3] 2014-15, the appellant filed Income Tax Return (ITR, for short) on 30.09.2014 claiming refund of Rs.1532.09 Crores. On 31.08.2015, a notice under Section 143(2) of the Act[4] was issued to the appellant in respect of AY 2014-15. On 01.11.2015, the appellant filed ITR for AY 2015-16 claiming refund of Rs.1355.51 Crores. A notice under Section 143(2) of the Act was issued by the Department on 16.03.2016 in respect of AY 2015-16. A revised return was filed by the appellant on 31.03.2016 in respect of AY 2014-15. The appellant entered into an Advanced Pricing Agreement with the CBDT[5] under Section 92 CC of the Act. Thereafter, further revised return was filed on 25.11.2016 for AY 2015-16 and a modified return in terms of Section 92 CD of the Act was filed by the appellant on 22.02.2017 for AY 2014-15.

C] For AY 2016-17, the appellant filed ITR on 30.11.2016 claiming refund of Rs.1128.47 Crores. A notice under Section 143(2) of the Act was issued to the appellant on 03.07.2017 for AY 2016-17.

D] For AY 2017-18, ITR was filed by the appellant on 25.11.2017 claiming refund of Rs.743 Crores.

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[3] The Assessment Year
[4] The Income Tax Act, 1961
[5] Central Board of Direct Taxes

E] Submitting that there was complete inaction on part of the respondents in processing the ITRs filed by the appellant and in issuing appropriate refund to the appellant, Writ Petition (Civil) No.2730 of 2018 was filed by the appellant in the High Court, praying for following principal relief.

> "a. Writ of Mandamus or Writ, Order or Direction in the nature of Mandamus, or any other appropriate Writ, Order or Directiion under Article 226 / 227 of the Constitution of India directing the Respondents to process and grant refunds for the AYs 2014-15 to 2017-18, along with interest under Section 244A of the Act;"

F] On 03.07.2018, the respondent No.1 filed an affidavit in reply submitting inter alia that the ITRs of the appellant raised multiple issues like Transfer Pricing Adjustment, Capitalization of Licence Fees, 3G Spectrum Fees, Asset Restoration Cost Obligation including the effect of amalgamation of group entities which required thorough scrutiny and determination.

G] During the pendency of said Writ Petition, a letter was issued by the respondent No.1 on 23.07.2018, the relevant portion of which was as under :-

> "The assessment years for which request has been made to process the return under Section 143(1) are already under scrutiny for AY 2012-13, AY 2013-14, AY 2014-15, AY 2015-16 and AY 2016-17. I would

like to draw your attention to Section 143(1D) of Income Tax Act:

> *(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)*

The case is under compulsory scrutiny for AY 2017-18 and as per section 241A of Income Tax, Act 1961:

> *"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."*

Considering, pending special audit, pending scrutiny, pending demands of amount of more than 4500 crore, it will prejudicial to the interest of revenue to process the returns without completion of the pending scrutiny cases. Therefore, exercising the powers under section 143(1D) of Income Tax Act, 1961 and under Section 241A of Income Tax Act, 1961, the undersigned decline the processing of returns under Section 143(1). The above decision has been taken after taking into cognizance the order of Honorable 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 ASSESSING OFFICER concerned exercising his discretion in terms of Section 143 (1D) of the Act."*

H] In the meantime, on 13.07.2018 a revised return was filed by the appellant for AY 2017-18 claiming refund of Rs.744.94 Crores. A notice

under Section 143(2) of the Act was issued to the appellant on 10.08.2018 for AY 2017-18.

I] On 31.08.2018, VMSL merged with Idea Cellular Ltd. and the resultant company was named Vodafone Idea Ltd.

J] By its judgment and order dated 14.12.2018, the High Court dismissed said Writ Petition.

J-1] The submissions of the appellant were recorded as under:-

> "**8.** Vodafone also place 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.
>
> … … …
>
> **13.** With respect to the delay in processing of the tax return, 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.

… … …

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 Assessing Officer 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."

J-2] On the other hand, the submissions on behalf of the respondents were :-

"**19.** The revenue denies allegations of deliberate omission to refund amounts aggregating to Rs.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 Rs. 33,93,397 and subsequently, the income determined by the Assessing Officer was Rs.546,64,25,250/-.

… … …

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 provisio 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)……."

J-3] After considering rival submissions, relevant statutory provisions and the decisions relied upon, the High Court observed:-

"**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 the 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 amont 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).

… … …

39. A reading of the above judgments and the relevant provisions, clearly shows that Section 143(2) empowers, the Assessing Officer 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 an 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 assesse'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 Assessing Officer 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 Assessing Officer should take up an expeditious disposal of the question once the assessee requests for release of the refund.

… … …

44. Now in this case, acknowledgement or intimation had not been sent by the Assessing Officer. 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 Assessing Officer has to refuse refunds or there is an automatic bar to refunds. The Assessing Officer 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 28.07.2018, 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 Assessing Officer's discretion. Therefore, the CBDT circular was set aside.

… … …

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 Assessing Officer to process the refund and make over the money; it is up to the Assessing Officer -

> 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."

K] On 27.12.2018 and 31.12.2018, Draft Assessment Orders in terms of Section 144 C of the Act were passed for AY 2014-15 and AY 2015-16 respectively.

L] In the Special Leave Petition (from which this appeal arises) questioning the aforesaid decision of the High Court, notice was issued by this Court on 18.01.2019. In the affidavit in reply, the respondents asserted:-

> **"7.** That having extracted the relevant provisions, it would be relevant to state that the petitioner itself has made several averments before the High Court that is facing "precarious financial conditions" with an accumulated loss of Rs.5,557 crores and debts amounting to Rs.53,000 crores as on 31.03.2017". It is equally pertinent to state that the Respondent-Revenue had filed a counter affidavit on 3rd July, 2018 against the Writ Petition in the High Court of Delhi wherein it has been categorically averred that there are huge pending demands against the petitioner herein more than of Rs.5000 Crores. The contents of the Counter Affidavit before the High Court may be treated as a part and parcel of the present Affidavit. It

> has been stated that multiple issues on which addition have been made giving rise to the demand liabilities, and several of such issues are also recurring in nature.
>
> … … …
>
> **10.** That it is also submitted that the order dated 23rd July, 2018 passed by the Assessing Officer is an order under Section 143(1)(D) for the assessment years 2012-13 to 2016-17 as evident from a bare reading of the said order giving reasons for refusal of refund claimed by Vodafone Mobile Service Limited. As far as the refusal of refund claimed for the A.Y. 2017-18 is concerned, the said order draws its power under Section 241A of the Act as clearly stated in the order dated 23rd July, 2018."

Reference was made to various pending proceedings where the demands raised for earlier assessment years were stayed and it was stated:-

> "24. That it is wrong to say that the letter/order dated 23.07.2018 issued by Respondent No.1 u/s 143(1D) and 241A of the Income Tax Act, 1961 is beyond limitation, bereft of any cogent reasoning and without jurisdiction as the letter/order was issued for good reasons to protect the interest of the revenue which is reflected vide Para 45 of the impugned judgment. The reasoning was based upon pending special audit, pending scrutiny and pending demands of more than Rs.5000 crore. Further, the letter/order was not beyond limitation because Section 143(1D) starts with a non-obstante clause, which is over and above the provisions of Section 143(1), which has been discussed in Para 44 of the impugned judgment."

M] On 14.03.2019 an intimation was sent to the appellant by the respondent No.1 regarding withholding of refund for AY 2017-18. It stated about the demand status for earlier assessment years as under :-

A.Y.	Nature of Demand	Amount of Demand Raised u/s 143(3)/154	Amount already paid/ Adjusted	Balance Outstanding
2008-09	Corporate Tax assessment u/s 143(3)	84,91,27,579/-	10,00,00,000/-	74,91,27,579/-
2009-10	Corporate Tax Assessment u/s 143(3)	2,42,86,76,260/-	97,36,82,990/-	1,45,49,93,270/-
2010-11	Corporate Tax Assessment u/s 143(3)	3,36,22,76,980/-	60,00,00,000/-	2,76,22,76,980/-
2010-11	Corporate Tax Assessment u/s 143(3)	1,65,14,76,430/-		1,65,14,76,430/-
2011-12	Corporate Tax Assessment u/s 143(3)	2,11,61,29,711/-		2,11,61,29,411/-

Thereafter, it went on to state:-

> "It is also to be noted that earlier refund was withheld vide notesheet dated 23.07.2018 after due approval due to non-availability of proceeding of return facility in ITBA for AY 2017-18 which was intimated to the assessee vide letter dated 23.07.2018. In view of the above discussion there is sufficient reason to believe that issue of refund will negatively impact the interest of the revenue. Therefore, proposal for withhold the refund for AY.2017-18 was forwarded again to Pr. Commissioner of Income Tax-09, Delhi and same has been approved. Approval on note sheet was taken as well as procedure for approval through ITBA was also followed for withholding of refund which also involves approval from PCIT-09. The approval for withholding of refund u/s 241 was taken from PCIT-9 which was sent through proper channel through Addl. CIT Range 26.
>
> In view of the facts above you are hereby intimated that refund of A.Y.2017-18 in the case of M/s Vodafone Mobile Service Limited has been withhold u/s 241A of the Income Tax Act, 1961 till the completion of scrutiny proceedings u/s 143(3) or 144C r.w.s. 143(3) of the Income Tax Act, 1961."

N] Objections raised by the appellant against the Draft Assessment Orders issued on 27.12.2018 and 31.12.2018 were disposed of on 20.09.2019. Thereafter, Final Assessment Orders under Section 143 (3)

of the Act were passed on 31.10.2019 for AY 2014-15 and 2015-2016, whereunder the appellant was held entitled to refund of Rs.733 Crores (approximately) in respect of AY 2014-15, whereas for AY 2015-2016 the claim for refund was rejected and demand in the sum of Rs.582 Crores (approximately) was raised. In an appeal preferred by the appellant, said demand for AY 2015-16, has, since then, been stayed by the Income Tax Appellate Tribunal.

4. The relevant dates and the factual developments as stated above, can be summarized in a tabular form as under:-

Assessment year	Date of filing of ITR	Notice u/s 143(2)	Filing of Revised Return	Modified Return in terms of S.92CD	Draft Assess-ment Order u/s. 144C	Order by DRP disposing of objections of the appe-llant against order u/s. 144C	Final Assess-ment Order u/s. 143(3)	Order u/s.143 (1D)
2014-15	30.9.2014 (Refund: Rs.1532 Cr Approx.)	31.8.2015	31.3.2016	22.2.2017	27.12.2018	20.9.2019	31.10.2019 (Refund: Rs.733Cr. Approx.)	23.7.2017
2015-16	1.11.2015 (Refund: Rs.135 5 Cr Approx.)	16.3.2016	25.11.2016		31.12.2018	20.9.2019	31.10.2019 (Demand: Rs.582 Cr. Approx.)	23.7.2018
2016-17	30.11.2016 (Refund: Rs.1128 Cr. Approx.)	3.7.2017						23.7.2018
2017-18	25.11.2017 (Refund: Rs.745 Cr Approx.)	10.8.2018	13.7.2018					14.3.2019

5. In this appeal, we heard Mr. J.D. Mistri, learned Senior Advocate for the appellant and Mr. Zoheb Hossain, learned Advocate for the respondents. During the course of arguments, it was accepted by the

respondents that insofar as AY 2017-18 was concerned, the order dated 23.07.2018 passed under Section 143(1D) of the Act was without jurisdiction, as by that time no order was passed under Section 143(2) of the Act for the concerned Assessment Year. It was submitted that in the circumstances, a fresh order was passed on 14.03.2019 after due compliance of the statutory requirements. In order to verify the developments leading to the passing of order dated 14.03.2019, the concerned record was summoned and perused. The Court was satisfied that all the antecedent steps leading to said order were taken in accordance with law and settled practice.

An affidavit was also filed on behalf of the respondents explaining in detail the developments leading to the passing of order dated 14.03.2019 and issuance of intimation dated 09.04.2019. It was stated:

> "That as per CPC accounting of the return was completed on 9th April, 2019 and intimation u/s 143(1) was generated on 9th April, 2019. It is also evident from Page 1 of the intimation dated 09.04.2019 that contrary to the allegations of the Petitioner that the intimation u/s 143(1) was never communicated to them, it is submitted that the intimation u/s 143(1) was sent to the email address provided by the assessee, that is, atul.goel@vodafoneidea.com..
>
> That it was in this background that the screen-shot relied upon by the assessee during the course of the hearing shows that the ITR was processed on 09.04.2019.

> The intimation under Section 143(1) was made on 09.04.2019 and the said intimation stated that refund determined under Section 143(1) in the said intimation has been withheld as per the proviso of Section 241A and that the refund if any will be released on completion of the assessment under Section 143(3)/144(4) as the case may be along with the interest under Section 244A and subject to adjustment of arrears demand, if any under Section 245.
>
> In view of the above, it is submitted that the CPC has adopted the due process prescribed by the ITBA-ITR Processing Instruction No.5 dated 14.12.2018. As per the said process, the refund determination is complete immediately after recommendation of the total income tax and matching of tax credits is completed at CPC system. At this stage the refund determination is communicated by CPC, Bangalore to AO through ITBA module. Once the refund is approved/withheld/blocked by the AO, CPC will complete the accounting of the record and act according to other processes involved like Section 245 of I.T. Act i.e. adjustment of refund determined against tax arrears due."

5.1 One more development must also be adverted to. In the hearing dated 08.01.2020, reliance was placed on the order dated 28.12.2019 passed in connection with M/s Idea Cellullar Ltd. It was therefore observed by this Court:

> "During the course of hearing, Mr. Zoheb Hossain, learned counsel appearing for the Revenue produced a copy of the order dated 28.12.2019 passed in connection with Idea Cellular Limited (with which entity the appellant now stands merged).
>
> Mr. Hossain submitted that the order dated 28.12.2019 will have bearing on the issue insofar as the refund

> payable to the present appellant in respect of the assessment year 2014-15 is concerned.
>
> We direct the Department to place on record copy of the order along with such submission as the Department wishes to place on record. Let the submissions by way of an affidavit be filed within seven days from today.
>
> The appellant shall have liberty to respond to those submissions within next seven days."

The copy of the order dated 28.12.2019 placed on record indicates that for Assessment Year 2016-17 a demand in the sum of Rs.2824.99 crores has been raised against the appellant.

After conclusion of oral hearing, the parties also filed their written submissions.

6. It was submitted by the appellant:

> "In the facts of the present case, admittedly, for AYs 2014-15 to 2016-17 (for which provisions of Section 143(1D) of the Act are relevant), the Respondent has neither processed the return of income for the said years by the last date, viz. 31.03.2018 nor did the Respondent exercise the discretion provided under Section 143(1D) of the Act by that. As per the Respondents' own submission, such discretion under Section 143(1D) of the Act was only exercised vide letter/order dated 23.07.2018, which admittedly is beyond the limitation period.
>
> Therefore, the exercise of such discretion, having been made beyond limitation is a nullity in the eyes of law and, hence, no cognizance can be taken of such a letter/order.

Insofar as the Assessment Year 2017-18 is concerned, the Respondents during the course of arguments, before this Hon'ble Court have admitted that order dated 23.07.2018 was without jurisdiction because on that date, neither the return of income was processed, nor a notice under Section 143(2) issued, warranting exercise of powers under Section 241A of the Act. On that ground alone, the Impugned Order insofar as Assessment Year 2017-18 is concerned should be set aside and the refund claimed for that year should be granted with interest……

Having admitted that the Order dated 23.07.2018 was without jurisdiction, the Respondent set up an alternate case that the time limit for processing the return of income expires on 31.03.2020 and, therefore, the proceedings for AY 2017-18 are inchoate and no direction may be issued for that year. When it was pointed out that processing has already been completed vide intimation dated 09.04.2019, the Respondent changed its stand and argued that a letter dated 14.03.2019 was issued after filing of the counter affidavit before this Hon'ble Court on 06.03.2019, seeking to again exercise powers under Section 241A of the Act. Admittedly, as per the e-filing portal of the Income Tax Department, and the intimation produced by the Respondent before this Hon'ble Court on 08.01.2020, the processing of the return for AY 2017-18 was completed only on 09.04.2019 and, therefore, the alleged exercise of power under Section 241A on 14.03.2019 is without jurisdiction since it suffered from the same vice as the Order dated 23.07.2018, i.e. refunds could not have been withheld under Section 241A prior to processing of the return of income…...

Without prejudice to the submission that the Order dated 23.07.2018 issued for the AYs 2014-15 to 2016-17 was without jurisdiction, having been issued beyond limitation and the Orders dated 23.07.2018 and 14.03.2019 invoking jurisdiction under Section 241A of the Act for the AY 2017-18 have no sanctity of law since the sine qua non for invoking that Section, i.e. processing of return was completed on 09.04.2019, even on merits, neither the Order dated 23.07.2018 nor the order dated 14.03.2019 disclose

any grounds on which powers under Section 143(1D) or Section 241A of the Act could have been invoked."

7. The respondents submitted:

"On merits, it is submitted that if the AO issued a Notice u/s 143(2) within the time limit i.e. 6 months from the end of the financial year in which return was filed, then there is no longer a requirement to process the return under Section 143(1). That being the position of law laid down by the Hon'ble Supreme Court, the discretion under Section 143(1D) can be exercised at any point prior to the passing of the final assessment order.

The entire objective of not processing a return after issuance of a scrutiny notice is that in cases where there is a likelihood of substantial demands, there should not be a compulsion on the Revenue to issue refunds. There is no anomaly in the above legislative scheme which warrants dilution of the non-obstante clause and to read into Section 143(1D) a limitation which the legislature has not prescribed…...

It is well settled that a non-obstante clause is a legislative device which is employed to give overriding effect to some or all contrary provisions and as such, the operation of a non-obstante clause cannot be limited in any manner and must be given its full effect……

The High Court at para 44 has categorically held that since Section 143(1D) begins with a non-obstante clause, it will overbear/override the second proviso to Section 143(1) which contains a limitation period of one year for precession of return.

Without prejudice to the submission that the merits of the order dated 23.07.2018 as well as order dated 14.03.2019 has never been assailed by the Petitioner before any forum, nor any arguments advance during the hearing before the High Court and that the same cannot be raised for the first time before this Hon'ble Court in an SLP, it is submitted that the AO had

> withheld refund in all these years for cogent and valid reasons, in the interest of the revenue, subject to final scrutiny assessment proceedings. It is submitted that the scope of judicial review against such an order where the AO has exercised his discretion would be limited and any interference can only be done if such an exercise of power is either wholly capricious or without any valid reasons."

8. The inter-relation between sub-sections of Section 143 of the Act, as the Section then stood, was subject matter of discussion by this Court in **CIT** *v.* **Gujarat Electricity Board**[6] which in turn referred to the decision of the Gujarat High Court in ***Gujarat Poly Avx Electronics Ltd***. v. ***Dy. Commissioner of Income Tax (Asstt.)***[7]. This Court observed:

> **"5.** The learned counsel appearing for the respondent have pointed out that in a number of judgments several High Courts have consistently taken the view that once regular assessment proceedings have commenced under Section 143(2) of the Income Tax Act, 1961, it is a limitation on the jurisdiction of the assessing officer to commence proceedings under Section 143(1)(a) of the Act.
>
> **6.** 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.
>
> **7.** Apart therefrom, the provisions of 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

[6] (2003) 260 ITR 84
[77] (1996) 222 ITR 140 Guj.

> 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).”

8.1 The facts and relevant submissions in ***Gujarat Poly Avx Electronics Ltd.***[2] were recorded in the decision of the Gujarat High Court as under:

> **“2.** On 12th September, 1994 the assessee submitted a return of loss of Rs.1,74,78,530 for the assessment year 1993-94 as per the computation of income and depreciation chart annexed to the petition at Annexure A. The assessee claimed depreciation of Rs. 1,74,78,526. Manufacturing activities started on 24th March, 1993, i.e. during the accounting year ending on 31st March, 1993 (the assessment year 1993-94). It was specifically pointed out that "the amount of interest received during the public issue of Rs. 1,07,85,590 is not to be considered as income and has been given set off against the interest outgoings included under pre-operative expenditure" in view of several decisions including that of the apex Court.
>
> **3.** As stated by the learned counsel, on filing of the return, the Assessing Officer (AO) under the new scheme for the assessment under Section 143 of the Act, had two options; i.e., (i) either to accept the return under s. 143(1) with necessary adjustments, if there is any, or (ii) to proceed to make assessment under Section 143(3) or under Section 144 by issuing notice under Section 143(2) of the Act. In the instant case, instead of accepting the return under Section 143(1) of the Act, undisputedly, the Assessing Officer issued notice under Section 143(2) of the Act on 1st December, 1994, vide Annexure C. It is contended in

the petition that in continuation of the notice the Assessing Officer addressed a letter on 15th November, 1995 calling upon the assessee to attend on 27th November, 1995, vide letter Annexure C-1. The assessee's representative appeared before the Assessing Officer on 27th November, 1995 but the Assessing Officer adjourned the case to 1st December, 1995. On 1st December, 1995 there was a discussion between the representative of the assessee and the Assessing Officer. The assessee was called upon to make clarifications regarding various points and was also asked to clarify as to how the depreciation as claimed should not be disallowed and why interest should not be taxed as receipt on the revenue account. It is contended by the assessee that the Assessing Officer was in the midst of the proceedings under Section 143(3) of the Act. However, Assessing Officer issued intimation/order under Section 143(1)(a) of the Act, vide Annexure D, rejecting the return of income as computed by the assessee resulting in disallowing depreciation as claimed and by taxing the interest income of Rs.1,07,85,590 as income from other sources and thus raised the demand of Rs. 1,30,83,741 under various heads and sections of taxes, surcharge and additional tax under Sections 143(1A), 234A and 234B.

4. Mr. Shah, learned counsel appearing for the assessee, has contended that once the Assessing Officer has exercised option to proceed under Section 143(3) of the Act by issuing notice under Section 143(2) of the Act even if adjustments that may be made by the Assessing Officer are in order, Assessing Officer has forfeited the authority to act under Section 143(1) by virtue of his option having exercised to make an assessment under Section 143(3) of the Act by issuing a notice under s. 143(2) of the Act.

5. As against this, Mr. Shelat, learned counsel (for the Revenue), has contended that it is open for the AO to follow the procedure under s. 143(1) and 143(2) simultaneously. His contention is that it is open to have parallel proceedings and is not compulsory to assess as per s. 143(3) of the Act though notice under s. 143(2) of the Act is issued and before making

assessment under s. 143(3) of the Act he can proceed under s. 143(1) of the Act. No other contention is raised."

8.1.1 The relevant provision, namely Section 143 as it then stood was quoted in paragraph 6 as under:

"6. It would be better to have a look at the relevant section which is reproduced as under:

"143(1)(a) Where a return has been made under Section 139, or in response to a notice under sub-s. (1) of Section 143, -
(i) If any tax or interest is found due on the basis of such return, after adjustment of any tax deducted at source, any advance tax paid and any amount paid otherwise by way of tax or interest, then, without prejudice to the provisions of sub-s. (2), an intimation shall be sent to the assessee specifying the sum so payable, and such intimation shall be deemed to be a notice of demand issued under Section 156 and all the provisions of this Act shall apply accordingly;
(ii) If any refund is due on the basis of such return, it shall be granted to the assessee :
Provided that in computing the tax or interest payable by, or refundable to the assessee, the following adjustments shall be made in the income or loss declared in the return, namely -
(i) any arithmetical errors in the return, accounts or documents accompanying it shall be rectified;
(ii) any loss carried forward, deduction, allowance or relief, which, on the basis of the information available in such return, accounts or documents, is prima facie admissible but which is not claimed in the return, shall be allowed :
(iii) any loss carried forward, deduction, allowance or relief claimed in the return, which, on the basis of the information available in such return, accounts or documents, is prima facie inadmissible, shall be disallowed.
Provided further that where adjustments are made under the first proviso, an intimation shall be sent to the assessee, notwithstanding that no tax or interest is found due from him after making the said adjustments :
Provided also that an intimation for any tax or interest due under this clause shall not be sent after the expiry of two years from the end of the assessment year in which the income was first assessable.....

xxx xxx
xxx xxx

(1A)(a) Where as a result of the adjustments made under the first proviso to clause (a) of sub-section (1) -
(i) the income declared by any person in the return is increased; or
(ii) the loss declared by such person in the return is reduced or is converted into income, The Assessing Officer shall, -
(A) in a case where the increase in income under sub-clause (i) of this clause has increased the total income of such person, further increase the amount of tax payable under sub-section (1) by an additional

income-tax calculated at the rate of twenty per cent on the difference between the tax on the total income so increased and the tax that would have been chargeable had such total income been reduced by the amount of adjustments and specify the additional income-tax in the intimation to be sent under sub-clause (i) of clause (a) of sub-section (1):

(B) in a case where the loss so declared is reduced under sub-clause (i) of this clause or the aforesaid adjustments have the effect of converting that loss into income, calculate a sum (hereinafter referred to as additional income-tax) equal to twenty per cent of the tax that would have been chargeable on the amount of the adjustments as if it had been the total income of such person and specify the additional income-tax so calculated in the intimation to be sent under sub-clause (i) of clause (a) of sub-s. (1);

(C) where any refund is due under sub-s. (1), reduce the amount of such refund by an amount equivalent to the additional income-tax calculated under sub-clause (A) or sub-clause (B), as the case may be.....

xxx xxx

xxx xxx

(2) Where a return has been made under Section 139, or in response to a notice under sub-s. (1) of Section 142, the AO shall, if he considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not underpaid the tax in any manner, serve on the assessee a notice requiring him, on a date to be specified therein, either to attend his office or to produce, or cause to be produced there, 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 twelve months from the end of the month in which the return is furnished.

(3) 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 AO may require on specified points, and after taking into account all relevant material which he has gathered, the AO 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 on the basis of such assessment.

(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....."

8.1.2 Thereafter, the issue was considered thus:-

"8. It is thus clear that the Assessing Officer even after issuing intimation after making adjustments as per provisions of s. 143(1) of the Act can call upon

the assessee, if he considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not underpaid the tax in any manner. Once this opinion is formed then the Assessing Officer will have to serve on the assessee a notice under Section 143(2) of the Act requiring him to produce evidence before him on the date specified in the notice. This is permissible in view of saving clause in Section 143(1) of the Act. Section 143(1) of the Act is to be exercised without prejudice to the provisions of sub-s. (2) of Section 143 of the Act. However, exercise of powers under Section 143(1) is not made permissible after issuance of notice under Section 143(2) of the Act. The Assessing Officer cannot exercise powers under Section 143(1) of the Act as he himself has decided to make regular assessment under Section 143(3) of the Act. That in Section 143(2) like under Section 143(1) powers are not saved. As the Assessing Officer has called upon the assessee to furnish evidence to satisfy himself about the correctness or legality of the claim made by the assessee in his return, hence, only after hearing the assessee and after considering the evidence that may be produced by the assessee the Assessing Officer has to make the order in writing making assessment of the total income or loss of the assessee and he has to determine the amount payable on the basis of such assessment, that is, under s. 143(3) of the Act. Mr. Shelat, learned counsel for the Revenue, fairly stated that notice under Section 143(2) of the Act cannot be withdrawn. Notice under Section 143(2) of the Act is a step towards regular assessment under Section 143(3) of the Act and, therefore, in absence of any provision it is not open to make assessment in any other manner than provided as per Section 143(3) of the Act.

… … …

10. Powers to make assessment in terms of its proviso can be invoked and when the claim is prima facie inadmissible or prima facie admissible, as the case may be, adjustment is to be made. The word prima facie clearly indicates that it must be first evidenced. A decision on the debatable issue is not envisaged. Issuance of notice under s. 143(2) of the Act suggests

that the Assessing Officer has determined to make assessment under Section 143(3) of the Act. It is clear, looking to the language used in different sub-sections that order under Section 143(1) is a summary one and the Assessing Officer on perusal of the return, that is, computation of income, is able to accept it as it is or with necessary adjustments as indicated in sub-clause (a) of sub-section (1) of Section 143 of the Act. The submission made by learned counsel for the Revenue is that even after issuance of notice under Section 143(2) of the Act, it is permissible for the Assessing Officer to assess under Section 143(1) of the Act. One has to examine the claim on account of results of adjustments made in the income shown in the return whether it results into increase or loss declared in the return is reduced or is converted into income. If that is so it would entail further tax at the rate of 20% on the income so increased or a further tax of 20% on the loss so reduced as if it is income and assessee will be charged as per sub-section (1A) of Section 143 of the Act. With a view to see that taxpayers in the return furnish details with accuracy and correctness this provision is made. The assessee is aware about the provision and should take care that no incorrect statement is made with a view to save additional tax which may be imposed on him. However, when the Assessing Officer is not assessing the correctness about the claim which is either prima facie admissible or prima facie inadmissible, and Assessing Officer with a view to ensure that the assessee has not computed excessive loss or has not underpaid tax in any manner has issued notice under Section 143(2) of the Act, then there should be evidence before him and on the basis of the evidence that may be produced by the assessee assessment is to be made under Section 143(3) of the Act, and assessee will be liable to the tax in the manner laid down in the Act if he is required to pay. After calling upon the assessee to produce evidence if the Assessing Officer is sending intimation instead of making regular assessment under Section 143(3) of the Act then in that case the Assessing Officer would assess and would charge tax as per Section 143(1A) of the Act which is not contemplated under Section 143(3) of the Act and thus what is not permissible under Section 143(3) of

> the Act cannot be made permissible by allowing the Assessing Officer to resort to Section 143(1) of the Act.
>
> … … …
>
> **16.** In this view of the matter, we are of the opinion that after issuance of notice under Section 143(2) of the Act, it is not open for the Assessing Officer to make adjustment or to pass order under Section 143(1) of the Act but he has to make assessment in accordance with law, i.e., under Section 143(3) of the Act."

9. These decisions were rendered in the context of the provisions then in existence which had following notable features:-

(a) sub-section (1A) in terms of which, if any adjustments had resulted in increased total income, an additional income tax at the rate of 20 per cent on the difference would be levied.

(b) the intimation to be sent under sub-section (1) was expressly stated to be "without prejudice to the provision of sub-section (2)."

Nonetheless, the basic distinction that was noted was: the procedure under sub-section (1) was summary in nature whereas that under sub-section (2) was a regular assessment.

10. Section 143 of the Act has since then undergone considerable change. Sub-section (1) stands modified and now specifies with clarity the nature of adjustments. Sub-section (1A) contemplates processing of

returns through Centralized Processing. Since we are principally concerned in the present matter with the effect and applicability of sub-section (1D), the legislative history relating to said sub-section (1D) is dealt with in detail hereunder:-

A) Sub-section (1D) was inserted vide Finance Act, 2012 as under:-

> "(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)"

The explanatory Note to the Finance Act, 2012 relevant to the proposed insertion of sub-section (1D) was:-

> "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 tax payer. 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 been issued for scrutiny of the return."

B) Finance Act, 2016 contemplated substitution of sub-section (1D) and insertion of a proviso with effect from 01.04.2017 as follows:

> "(1D) Notwithstanding anything contained in sub-section (1), the processing of a return shall not be necessary before the expiry of the period specified in the second proviso to sub-section (1), where a notice has been issued to the assessee under sub-section (2):

> Provided that such return shall not be processed before the issuance of an order under sub-section (3)."

The relevant explanatory Note to Finance Act, 2016 was:

> **"56.** Processing under Section 143(1) of the Income Tax Act be mandated before assessment:
>
> **56.1** Under the existing provision of sub-section (1D) of Section 143 of the Income Tax Act, processing of a return is not necessary where a notice has been issued to the assessee under sub-section (2) of the said Section.
>
> **56.2** The said sub-section (1D) of the aforesaid section has been amended to provide that in cases where a notice has been issued under sub-section (2) of Section 143 of the Income Tax Act the processing of return shall not be necessary before the expiry of one year from the end of the financial year in which the return is furnished. However, it is mandated to process the return before the issuance of order under sub-section (3) of Section 143 of the Income Tax Act.
>
> **56.3** Applicability: This amendment takes effect from the 1st of April, 2017 and will, accordingly apply in relation to assessment year 2017-18 and subsequent years."

C) The aforementioned substitution of sub-section (1D), however, never came into effect, as by Finance Act, 2017 said sub-section in the earlier form was retained and the text of the proviso was also modified. Effectively, on and with effect from 01.04.2017, sub-section (1D) and the proviso are:-

> **"(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 day of April 2017."

The concerned explanatory Note to Finance Act, 2017 was:-

"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."

D) Finance Act, 2017 also inserted Section 241A in the Act 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, withheld the refund up to the date on which the assessment is made."

11. Consequently, the relevant parts of sub-sections (1) to (3) of Section 143 of the Act, as they stand today are as under:

> **"143. Assessment**.—**(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;
>
> (*ii*) an incorrect claim, if such incorrect claim is apparent from any information in the return;
>
> (*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 10-AA, 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 26-AS or Form 16-A 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:

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, 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, 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 90-A, 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, 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, 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 acknowledgment 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 centralized 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, 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)** 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……."

12. Clause (a) of sub-section (1) of Section 143 has six sub-clauses specifying the kinds of adjustments which are required to be made for computing the total income or loss. Such adjustments are in the nature of "*arithmetical error in the return*"; incorrect claim "*apparent from any information in the return*"; disallowance of loss if the return of the previous year with respect to which such loss is claimed was furnished "*beyond the due date*"; disallowance of expenditure indicated in the audit report if it has "*not taken into account in computing the total income*"; disallowance of deductions specified in sub-clause if the

"*return is furnished beyond the due date*"; and addition of income as specified in sub-clause (vi) if it was not "*included in computing the total income*". All these features deal with matters which are apparent from the return and the inconsistency is evident on the face of it. Upon causing such adjustments after due intimation or notice to the assessee, the element of tax, interest and fee is to be computed in terms of clause (b). Thereafter, in terms of clause (c), due credit to the amount of tax paid and any relief that is allowable is to be given and the net amount payable or to be refunded, is to be computed. The intimation to be generated under clause (d) is on the basis of such exercise and if any refund is due, the same has to be granted in terms of clause (e). Thus, at every stage in sub-section (1) the return submitted by the assessee forms the foundation, with respect to which, if any of the inconsistencies referred to in various sub-clauses of clause (a) are found, appropriate adjustments are to be made.

On the other hand, the exercise of power under sub-section (2) of Section 143 of the Act, leading to the passing of an order sub-section (3) thereof, is to be undertaken, where it is considered 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.

The issuance of notice and consequent proceedings are premised on any of the aforesaid three postulates. In other words, the return filed by the assessee itself calls for or requires a further probe and deeper consideration. The guiding principle is to ensure that the income is not under-stated or the loss is not over-stated, or the tax is not under paid in any manner. Upon issuance of notice, the assessee is entitled to produce evidence in support of his case. After hearing the assessee and considering the evidence so produced, by an order in writing, assessment of total income or loss is to be made.

13. The nature of exercise of power under sub-section (1) as against that under sub-sections (2) and (3) is thus completely different. In the former case, the matter is processed, only to check whether any apparent inconsistencies are evident on the face of the return and connected material which may call for any adjustment while in the latter case, the matter is scrutinized after taking into account such evidence as the assessee may produce. The exercise in the latter case is to ensure that there is no understating of income or overstating of loss or under-payment of the tax in any manner. In other words, the veracity of the return is checked threadbare rather than considering mere apparent

inconsistencies from the return. Thus, the nature of power under these two provisions, as found by this Court in ***CIT*** v. ***Gujarat Electricity Board***[6] continues to bear the same distinction.

The power under sub-section (1) of Section 143 of the Act is summary in nature designed to cause adjustments which are apparent from the return while that under sub-sections (2) and (3) is to scrutinize the return and cause deeper probe to arrive at the correct determination of the liability of the assessee.

14. The exercise of power under Sub-sections (2) and (3) of Section 143 of the Act is thus premised on non-acceptance of what is evident from the return itself and to ensure that there is no avoidance of tax in any manner. The dimension of such power is far greater and deeper than mere adjustments to be made in respect of what is available from the return. Once such scrutiny is undertaken and proceedings are initiated by issuance of a notice under sub-section (2) of Section 143, it would be anomalous and incongruent that while such proceedings so initiated are pending, the return be processed under sub-section (1) of Section 143, which may in a given case, entail payment of refund. Logically, the outcome of the exercise initiated through notice under sub-section (2) of Section 143, must determine whether any refund is due and payable. If the return itself is under probe and scrutiny, such return cannot be the

foundation to sustain a claim for refund till such scrutiny is not complete. Considering the nature of power exercisable under these two limbs of Section 143, the inescapable conclusion is that the processing of return under sub-section (1) of Section 143 must await the further exercise of power of scrutiny assessment under sub-sections (2) and (3) of Section 143. If the power under sub-section (2) of Section 143 of the Act is initiated in a manner known to law, there cannot be any insistence that the processing under sub-section (1) of Section 143 be completed and refund be made before the scrutiny pursuant to notice under sub-section (2) of Section 143 is over.

15. The afore-stated conclusion is fortified and strengthened by clear stipulation to that effect in sub-section (1D) of Section 143. Irrespective of some change in the text of said provision which was sought to be introduced by Finance Act 2016 and not accepted by Finance Act, 2017, the legislative intent is clear from the expression, "… the processing of a return shall not be necessary, where a notice has been issued to the assessee under sub-section (2)" and by use of non-obstante clause. Though the period for which it would not be necessary to process the return was sought to be specified by Finance Act, 2016, mere absence of such period in the provision as it stands today, makes no difference. The above quoted portion from the provision and use of non-obstante clause

indicate with sufficient clarity the intent of the Parliament that in cases where notice under sub-section (2) is issued and proceedings are initiated, the processing of a return under sub-section (1) shall not be necessary.

16. The expression "shall not be necessary" is used in various statutes and even in the Constitution of India. This expression is used in the first proviso to Article 311(2) and in proviso to Article 320(3) of the Constitution of India. Some of the cases in which similar expression occurring in statutes was taken into account and effect was given to its plain language are:-

i) Proviso to Section 63(3) of the Motor Vehicles Act, 1939 – in ***Mohd. Ibrahim*** v. ***The State Transport Appellate Tribunal, Madras.***[8]

ii) Order XXX Rule 4 of the Code of Civil Procedure in ***Sohanlal and others*** v. ***Amir Chand and sons and others***[9]***, Upper India Cable Co. and others*** v. ***Bal Kishan***[10] and in ***Brij Kishore Sharma and others*** v. ***Ram Singh and sons and others***[11].

[8] (1970) 2 SCC 233
[9] (1973) 2 SCC 608
[10] (1984) 3 SCC 462
[11] (1996) 11 SCC 480

iii) Proviso to Section 68 of the Indian Evidence Act, 1872 – in ***Rasammal Issetheerammal Fernandez etc.*** v. ***Joosa Mariyam Fernandez and others***[12].

As against the general principle which mandates an action in a particular manner, when an exception is to be carved out, the relevant provisions stipulate "it shall not be necessary" to adhere to and follow the manner mandated by such general principle; and if the contingency contemplated by such exception arises, the general principle is to stand overridden.

17. The intent to have the general principle emanating from sub-section (1) of Section 143 overridden, in case where the proceedings are initiated pursuant to notice under sub-section (2) of the Act, gets more pronounced and emphasized by use of non-obstante clause in sub-section (1D). Recently, while dealing with non-obstante clause in Section 26(1) of the Provincial Small Cause Courts Act, 1887 this Court observed in ***Vaishali Abhimanyu Joshi*** v. ***Nanasaheb Gopal Joshi***[13] as under:

> **"33.** "Notwithstanding anything contained elsewhere in this Act" as used in Section 26(1) of the 1887 Act are words of expression of the widest amplitude engulfing the contrary provisions contained in the Act. The suit in question has been filed by the plaintiff for enforcement of his right as a licensor after allegedly terminating the gratuitous licence of the

[12] (2000) 7 SCC 189
[13] (2017) 14 SCC 373

> appellant. On a plain reading, Item 11 of Schedule II covers determination or enforcement of any such right or interest in immovable property. But by virtue of Section 26 sub-section (1) as applicable in the State of Maharashtra, Item 11 of Schedule II has to give way to Section 26(1) and a suit between licensor and licensee which is virtually a suit for recovery of immovable property is fully maintainable in Judge, Small Cause Court that is why the suit has been instituted by the plaintiff in the Judge, Small Cause Court claiming the right and interest in the immovable property.
>
> **35.** A statutory provision containing non obstante clause has to be given full effect. This Court in *Union of India* v. *G.M. Kokil*[14] has laid down in para 11 as below: (SCC p. 203)
>
> *"11. … It is well known that a non obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions. Thus the non obstante clause in Section 70, namely, "notwithstanding anything contained in that Act" must mean notwithstanding anything to the contrary contained in that Act and as such it must refer to the exempting provisions which would be contrary to the general applicability of the Act. …"*

18. In the premises, we hold that in respect of Assessment Years ending on 31st March 2017 or before, if a notice was issued in conformity with the requirements stated in sub-section (2) of Section 143 of the Act, it shall not be necessary to process the refund under sub-section (1) of Section 143 of the Act and that the requirement to process the return shall stand overridden.

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[14] (1984) Supp. SCC 196

19. We must now deal with the issue whether any intimation is required to be given to the assessee that because of initiation of proceedings pursuant to notice under sub-section (2) of Section 143 of the Act processing of return in terms of sub-section (1) of Section 143 of the Act, would stand deferred. The processing of return in terms of sub-section (1A) of Section 143 of the Act is to be done through centralized processing and as stated earlier, the scope of processing under sub-section (1) of Section 143 of the Act is purely summary in character. Once deeper scrutiny is undertaken and the matter is being considered from the perspective whether there is any avoidance of tax in any manner, issuance of notice under sub-section (2) itself is sufficient indication. Sub-section (1D) of Section 143 of the Act does not contemplate either issuance of any such intimation or further application of mind that the processing must be kept in abeyance. It would not, therefore, be proper to read into said provision the requirement to send a separate intimation. In our view, issuance of notice under sub-section (2) of Section 143 is enough to trigger the required consequence. Any other intimation is neither contemplated by the statute nor would it achieve any purpose.

20. Consequently, the submission that the intimation dated 23.07.2018 must be held to be invalid, *inter alia* on the ground that it

was issued well after the period within which the return was required to be processed under sub-section (1) of Section 143 of the Act, must be rejected.

21. However, insofar as returns filed in respect of assessment year commencing on or after the 1st April, 2017, a different regime has been contemplated by the Parliament. Section 241-A of the Act requires a separate recording of satisfaction on part of the Assessing Officer that having regard to the fact that a notice has been issued under sub-section (2) of Section 143, the grant of refund is likely to adversely affect the revenue; whereafter, with the previous approval of the Principal Commissioner or Commissioner and for reasons to be recorded in writing, the refund can be withheld.

Since the statute now envisages exercise of power of withholding of refund in a particular manner, it goes without saying that for assessment year commencing after 01.04.2017 the requirements of Section 241-A of the Act must be satisfied.

22. We will, therefore, have to see whether insofar as AY 2017-18 is concerned, the order dated 14.03.2019 satisfies the required statutory parameters or not.

In terms of second proviso to sub-section (1) of Section 143 of the Act, the required intimation under said sub-section must be given before the expiry of one year from the end of the financial year in which the return is made. In respect of AY 2017-18, the return having been filed on 25.11.2017, period available in terms of said second proviso was upto 31.03.2019, without taking into account the fact that revised return was filed on 13.07.2018.

In the present case, the exercise of power on 14.03.2019 was not only after issuance of notice under sub-section (2) of Section 143 and after recording due satisfaction in terms of Section 241-A of the Act, but was also well within the period contemplated by sub-section (1) of Section 143 of the Act for causing due intimation.

Whether the satisfaction recorded in terms of said Section 241-A of the Act was otherwise correct or not and whether case for withholding of refund was made out or not, are not the issues that arise for our consideration. For the present purposes, whether exercise of power is facially in conformity with the statutory provisions is the issue and we are satisfied that there is nothing in the exercise of power that led to the passing of the order dated 14.03.2019 which could be said to have violated any statutory requirements.

23. Insofar as AY 2014-15 is concerned, final assessment order passed under Section 143(3) of the Act indicates that the appellant is entitled to refund of Rs.733 Crores; while for AY 2015-16 there is a demand of Rs.582 Crores. During the course of hearing, it was suggested on behalf of the respondents that demands in respect of earlier assessment years including the liability as a result of order dated 28.12.2019 as referred to in para 5.1 hereinabove being outstanding, the respondents would be entitled to invoke the requisite power under Section 245 of the Act to set off the amount of refund payable in respect of AY 2014-15 against tax remaining payable.

Since the requisite action is not even initiated, we say nothing in that respect. In the premises, we direct that the amount of Rs.733 Crores shall be refunded to the appellant within four weeks from today subject to any proceedings that the Revenue may deem appropriate to initiate in accordance with law. We also direct the respondents to conclude the proceedings initiated pursuant to notice under sub-section (2) of Section 143 of the Act in respect of AY 2016-17 and 2017-18 as early as possible.

24. Except for the directions as indicated above, we see no merit in any of the contentions advanced by the appellant. This appeal is, therefore, dismissed without any order as to costs.

……..J
(Uday Umesh Lalit)

…….J
(Vineet Saran)

New Delhi,
April 29, 2020