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

Date of decision: 04.01.2018

\+ **ITA 897/2016**

PR. COMMISSIONER OF INCOME TAX-6, NEW DELHI
..... Appellant

Through: Mr. Asheesh Jain, Sr. Standing Counsel.

versus

NATIONAL INFORMATICS CENTRE SERVICES INC.
..... Respondent

Through: Mr. Ved Jain and Mr. Pranjal Srivastava, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

HON'BLE MR. JUSTICE S. RAVINDRA BHAT (ORAL)
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1. The question of law framed in the case, is, as follows:-

> "*Did the Income Tax Appellate Tribunal (ITAT) fall into error in holding that the notice under Section* 143(2) *of the Income Tax Act*, 1961 *('the Act,) was barred by time, in the facts and circumstances of the case?"*

2. The brief facts are that the assessee filed its returns for A.Y. 2009-10 on 01.09.2010, choosing the electronic mode, in accordance with the then prevailing Rule 12(3) of the Income Tax Rules read with Sections 139C and 139D of the Income Tax Act. It is not in dispute that the returns were filed in an electronic mode, however, the ITR-V form i.e. the verification was not so filed. Again, it is not in dispute that there was no facilitation for filing of ITR-V forms electronically. What was expected of the assessee was that the ITR-V forms be mailed through a hard copy to the Headquarters at Central Processing Centre (CPC), Bengaluru. This is evident from the Circular No.3 of 2009 issued by the Board. That circular provided 30 days period to the parties, who did not have digital signatures, but, had filed their returns through electronic mode under Rule 12(3)(iii) of the Rules. By Circular of 01.09.2010, the Central Board of Direct Taxes (CBDT) extended the period of filing of ITR-V forms in such cases till 31.12.2010. The assessee filed its ITR-V form on 01.12.2010. The assesse's returns, in the meanwhile, were not processed and Revenue treated the documents filed as "Nil" return. An order was thereafter made under Section 143(3) of the Act and the assessment made at Rs.48,55,39,800/-. Penalty proceedings too, were initiated. The assessee appealed successfully to the Commissioner, who accepted its plea and the contention that in the absence of a notice under Section 143(2) of the Act within the time stipulated, scrutiny assessment under Section 143(3) of the Act could not have been completed. This argument was further accepted, upon appeal by the Revenue to Income Tax Appellate Tribunal ('ITAT').

3. The Revenue urges that the Tribunal erroneously held that the return had been filed correctly. In doing so, it places reliance upon Circular No.3 of 2009, to say, that the only manner known in law for the assessee's return to have been valid, would be, if, the verification form ITR-V was received by the Revenue Authorities i.e. the concerned Authority CPC, Bengaluru, within 30 days period, provided for, in the circular. Learned counsel relying upon Rule 12(3) of the Income Tax Rules contends that a combined reading of Sections 139C and 139D leads to the conclusion that in the absence of an ITR-V Form, i.e. the verification, no return is deemed valid, and, till such time, a valid return comes on record, which, in the present case occurred after 01.12.2010, the question of issuing any notice under Section 143(3) of the Act did not arise. Elaborating further, it was further argued by the Revenue that in the present case, the assessee had, in fact, participated in the proceedings through its representatives and the plain textual interpretation would rather work against the assessee, who was aware of the Circular No.3 of 2009, which had enabled the parties to furnish the ITR-V form within 30 days of the furnishing the return electronically. In his submissions therefore, when the assessee did not do so, the Authorities were within their rights in treating whatever was filed as a "nil" return.

4. Learned counsel for the assessee contends that the circular of 01.09.2010 was in fact formulated precisely, to cater to the exigencies in the present case. It is pointed out that CBDT was aware of the chaos and confusion, which prevailed after its earlier circular of 2009.

It is also contended that the assessee had in fact furnished the ITR-V forms within the period of 30 days through mail and the Circular No.3 of 2009 had not formulated any specific procedure i.e. furnishing of such form under registered post or any other stable form, to enable due verification. In the circumstances, the assessee cannot be placed at a disadvantage for having filed the ITR-V forms again within the extended time on 01.12.2010. Since the statutory period under Section 143(2) of the Act had gone past, the assessment completed under Section 143(3) could not be treated as valid and was correctly invalidated by the Appellate Commissioner and the ITAT.

5. The relevant part of Rule 12 of the Income Tax Rules was amended through the Income Tax Fourth Amendment, which was brought into effect on 14.05.2007. Rule 12(3), reads, as follows:-

> *"(3) The return of income or return of fringe benefits referred to in sub-rule (1) may be furnished in any of the following manners, namely:—*
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> *(i) Furnishing the return in a paper form;*
> *(ii) Furnishing the return electronically under digital signature;*
> *(iii) Transmitting the data in the return electronically and thereafter submitting the verification of the return in Form ITR-V;*
> (iv) *Furnishing a bar-coded return in a paper form*."

6. Para 6 of the Circular No.3 of 2009 referred to Section 139C and 295(2) and stated that the returns required to be furnished in the concerned forms were not to be accompanied by attachment or

annexures. Having regard to this problem, it was imperative to enable assessees, such as the present, to file electronic forms without attaching the necessary ITR-V, which was mandatory, facilitating it furnishing to the Central Processing Centre. This part was spelt out in the said circular, at para 10, as follows:-

> *"10. Since the Form ITR-V is bar-coded, assessee is advised not to fold the same and post it in A4 size envelope. The assessee shall furnish the Form ITR-V to the Income-tax Department by mailing it to "**Income Tax Department- CPC, Post Box** No - **1, Electronic City Post Office, Bangalore - 560100, Karnataka**" within thirty days after the date of transmitting the data electronically. The Post Box shall deliver all the Form ITR-V to the Centralized Processing Centre (CPC) of the Income-tax Department in Bangalore. Upon receipt of the Form ITR-V, the CPC shall send an e-mail acknowledging the receipt of Form ITR-V. The e-mail shall be sent in due course to the e-mail address furnished-by the tax-payers in his return.* ***No Form ITR-V shall be received in any other office of the Income-tax Department or in any other manner."***

7. In the present case, the Appellate Commissioner in his detailed order, was of the opinion that when the furnishing of the ITR-V form on 01.12.2010 was in accordance with the Circular of 01.09.2010 (which had provided for an extended period up to 31.12.2010 to the assessees to do so), the return filed originally i.e. on 30.09.2009, was deemed to be valid one. The discussion by the CIT (A) in this regard is as follows:-

"4.4 The E-Filing of Return Scheme of CBDT provides that where the return has been filed electronically without digital signature, on successful transmission the acknowledgement in form ITR-V will be generated by computer. The said computer generated form ITR-V shall be downloaded & after taking a print out it shall be physically verified under the signature of the taxpayer & shall be forwarded to the CPC, within the prescribed time period. If the said ITR-V in physical form is not sent to the CPC within the prescribed time period, then the return filed electronically will be considered as an invalid return. The scheme further provides that the date of e-filing of the return shall be considered as the date of furnishing of return if the computer generated ITR-V is furnished in the prescribed manner & within the prescribed time period. The CBDT vide its press release dt. 1.9.2010, has extended the time limit for filing ITR-V forms relating to ITRs for AY 2009-10 filed electronically (without digital signature) upto 31.12.2010 or within a period of 120 days of uploading/filing of the electronic return, whichever is later. There is no dispute that the assessee company has filed its ITR for the AY 2009-10 electronically on 30.9.2009 i.e. within the stipulated time period as prescribed u/s 139(1). The computer generated ITR-V was received by CPC Bangalore on 01/12/2010 within the prescribed statutory time limit. From the copy of the acknowledgement of the receipt of the said ITR-V issued by CPC the receipt of the same on 1.12.2010 & the e-filing of the ITR for AY-2009-10 on 30.9.2009 is clearly evident. In view of the above, as the duly verified and signed computer generated ITR-V was received by CPC, Bangalore before 31/12/2010, therefore, the e-return filed on 30/09/2009 is a valid return. On identical issue, Hon'ble ITAT Cochin Bench in the case of

EKK & Co. vs. ACIT in ITA Nos.138 & 223 (Coch.) of 2012 in its decision dt.16/11/2010 held:

> *"Para 5. The scheme framed by the CBDT clearly says that where the return was filed electronically with digital signature the acknowledgement generated electronically shall be evidence for filing of the return. Wherever, the return was filed electronically without digital signature, on successful transmission, the computer shall generate acknowledgement in form ITR-V. The form ITR-V generated by computer shall be downloaded and after taking a print out it shall be physically verified under the signature of the taxpayer and forwarded to the CPC. The scheme has also clarified that the date of transmitting the return electronically shall be the date of furnishing of return if the form ITR-V is furnished in the prescribed manner and within the period specified. In this case, the period specified is 31-12-2010 or 120 days from the date of uploading the return whichever is later. Admittedly form ITR-V was received by CPC on 29-11-2010 is within the prescribed time in the prescribed manner in the prescribed form. Hence, for all practical purpose, the date of filing of the return shall relate back to the date on which the return was electronically uploaded i.e 25-09-2009. Therefore, the contention of the ld.DR that receipt of Form ITR-V is the date of receipt of return has no merit at all.*
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> *6. In view of the above, the date of filing of the return of income is 25-09-2009. Therefore, the notice served on the taxpayer u/s 143(2) on 26-08-2011 is beyond the period of six months from the end of the financial year in which the return was furnished.*

Therefore, the notice issued by the assessing officer u/s 143(2) is invalid. Hence, it cannot be acted upon. Consequently, the assessment order passed by the assessing officer cannot stand in the eyes of law. Therefore, the same is quashed."

8. The con-joint reading of para 10 of Circular No.3 of 2009 and the circular dated 01.09.2010 makes it clear, beyond any manner of doubt, that, CBDT itself was alive to the difficulties faced in implementation of Section 139C, having regard to the phraseology in Section 295B. In the event of assessee choosing to file without digital signatures as per Rule 12(3) of the Income Tax Rules, there was a gap in the Statute – even a conflict. The Rule was, in essence, at war with the express provision of the Statute, which required assessees not to attach annexures or documents. Thus, the assessee could not attach the ITR-V form or provision or even send any scanned form. To mitigate the hardship, the CBDT felt that it was imperative to provide 30 days' period as it did through Circular No.3 of 2009. It later, realised that more confusion arose on account of limited period and the procedure provided, and therefore, it extended the period on 01.09.2010 upto 31.12.2010 or 120 days from the filing of the return, whichever was later. In the present case, the assessee had filed its return electronically on 30.09.2009. It says that it availed of the filing of the ITR-V forms through post. The Revenue is not in a position to verify either way. It is precisely to cater to this circumstance that the circular of 01.09.2010 (especially para 2) extended the period. The extension of this period necessarily meant that ITR-V forms received during

such extended period validated the returns originally filed. The interpretation sought to be placed by the Revenue now that fresh returns were necessary, in the opinion of the Court, flies against the opinion of the CBDT and the circumstances, under which, both the circulars were framed and published. In other words, these circulars were necessitated on account of the legislative gap – even conflict between the Rules on the one hand, which mandated electronic filing and other provisions of the Statute, which prohibited the attachment of annexures along with returns, which resulted in ITR-V form, as were in the present case.

9. Having regard to the above discussion, the Court is of the opinion that the question of law framed in this case is to be answered in favour of the assessee and against the Revenue. The appeal is therefore dismissed. No orders as to costs.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JANUARY 04, 2018
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