



# PRACTICE AREA UPDATE INDIRECT TAX

## **Karnataka High Court stays Revision Notice issued under Section 263 of the Income-tax Act, 1961 proposing to revise an intimation issued pursuant to a revised return.**

A Writ Petition was filed before the Hon'ble High Court of Karnataka challenging Notice issued under Section 263 of the Income-tax Act, 1961 ("Act") proposing to revise an intimation issued under Section 143(1) of the Act to the Petitioner, pursuant to the Petitioner filing a revised return under Section 139(5) of the Act after obtaining a condonation of delay in filing the revised return under Section 119(2)(b) of the Act.

The Petitioner was in receipt of employee stock options, which were liable to be extinguished due to an acquisition of the Petitioner's employer. In lieu thereof, the Petitioner's employer offered compensation to the Petitioner, which the Petitioner initially offered to tax under the head 'Salary'. Subsequently, the Petitioner sought to revise his return, offering the amount under the head 'Capital Gains', entitling the Petitioner to refund of excess tax paid.

However, since the statutory time limit prescribed under Section 139(5) of the Act for filing a revised return had expired, the Petitioner applied for condonation of delay under Section 119(2)(b) of the Act, which was decided in favour of the Petitioner by the Ld. Principal Chief Commissioner of Income Tax ("PCCIT"), and the Petitioner filed a revised return of income under Section 139(5) of the Act and claimed refund, and received an intimation under Section 143(1) of the Act to this effect.

Subsequently, the Petitioner was in receipt of a notice under Section 263 of the Act, proposing to revise and set aside the intimation under Section 143(1) of the Act on the ground that the amount is rightly classifiable under the head 'Salary', and hence, the intimation is erroneous insofar as it is prejudicial to the interests of the Revenue.

The Petitioner moved the Hon'ble Karnataka High Court against this Notice, wherein it was argued on behalf of the Petitioner that an intimation under Section 143(1) cannot be subject to revision as it not an 'order' referred to Section 263 of the Act. It was argued that the intimation is issued mechanically/automatically by the Centralized Processing Centre, and there is no human intervention, or application of human mind for invoking revisionary power under Section 263 of the Act. It was argued that this proposition is squarely covered by the decision of the Hon'ble Supreme Court in ACIT v. Rajesh Jhaveri Stock Brokers (P) Ltd., (2007) 291 ITR 500 (SC), and was followed subsequently by various High Courts, including the Hon'ble Calcutta High Court in Hill Top Holdings India Ltd. v. CIT, [2005] 278 ITR 501. The Hon'ble Court was also taken through relevant provisions, including the evolution of Section 143 and 263 of the Act, with particular emphasis on the omission of an Explanation to Section 143 of the Act, which stated that an intimation under Section 143(1) is to be treated as an order for the purposes of Section 264 of the Act.

In light of the detailed arguments of both the Petitioner and the Respondent, the Hon'ble Court was pleased to grant interim protection to the Petitioner, by directing that the Respondent authorities to not proceed further pursuant to the impugned revision Notice.

**Arguments on behalf of the Petitioner was led by our Partner, Mr. Prashanth Shivadass, assisted by our Associate Partner Rishab J, Senior Associate Shri Gayathri and Associates Prahalad Sriram and Siddhant Kishanpuria**



**Prashanth Shivadass**



**Rishab J**



**Shri Gayathri**



**Prahalad Sriram**



**Siddhant Kishanpuria**