IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

THE HON'BLE SRI JUSTICE P.SAM KOSHY

AND

THE HON'BLE SRI JUSTICE NARSING RAO NANDIKONDA

WRIT PETITION No.2799 of 2026

DATE: 30.04.2026

Between:
Paradise Food Court Private Limited.

…Petitioner

AND

Deputy Commissioner of Income Tax,
Circle – 5(1), Hyderabad and another.

…Respondents

ORDER: *(per the Hon'ble Sri Justice P.Sam Koshy)*

Heard Mr. Nageshwar Rao, learned counsel appearing on behalf of Mr. M. Venkatram Reddy, learned counsel for the petitioner; and Mr. K. Sudhakar Reddy, learned Senior Standing Counsel for Income Tax Department appearing on behalf of the respondents.

2. The instant is a writ petition filed by the petitioner under Article 226 of the Constitution of India assailing the impugned intimation dated 11.11.2019 issued by

the respondent No.2 under Section 143(1) of the Income Tax Act, 1961 (for short 'the Act') for the assessment year 2018-19.

3. The substantial ground on which the writ petition has been filed is that prior to passing of the impugned intimation under Section 143(1) of the Act, the Department itself had already passed an order of assessment under Section 143(2) of the Act on 23.09.2019, which was also taken for scrutiny assessment and the returns submitted by the petitioner were found to be proper. Therefore, once when the order of assessment has been passed under Section 143(2) of the Act, proceedings initiated under Section 143(1) of the Act automatically gets merged, which in the instant case has not been adopted by the Department and have even though passed an order under Section 143(2) of the Act, continued with the proceedings under Section 143(1) of the Act and passed the impugned intimation.

4. Learned counsel for the petitioner contended that the recourse to Section 143(1) of the Act is precluded after the regular assessment proceedings and an intimation under Section 143(1) does not carry the legitimacy of assessment proceedings. Learned counsel for the petitioner further contended that the Courts have consistently held that once when the proceedings under Section 143(2) and Section 143(3) of the Act have been commenced by issuance of notice under

Section 143(2) of the Act, it is a limitation on the jurisdiction of the Assessing Officer to proceed under Section 143(1)(a) of the Act.

5. It was contended by the learned counsel for the petitioner that making adjustment to declared loss on pretext of invoking Section 143(1) of the Act in the midst of ongoing scrutiny proceedings under Section 143(2) of the Act is capricious, unlawful and in violation of the principles of natural justice. Further, the CIT (Appeals) holding that there is no merger of intimation into regular assessment but only loss determined in intimation under Section 143(1) of the Act is merely considered in computation of income is also ex-facie arbitrary, illogical, unjust and unlawful.

6. Lastly, the learned counsel for the petitioner contended that the exercise of power under Section 143(2) of the Act by respondent No.1 on 23.09.2019 deprived or precluded respondent No.2 from proceedings under Section 143(1) of the Act. As such, the impugned intimation was passed without jurisdiction and is nullity in the eyes of law.

7. In support of the aforesaid contentions, the learned counsel for the petitioner relied upon the judgments of the Hon’ble Supreme Court in the case of **Vodafone Idea Limited (earlier known as Vodafone Mobile Services Limited) vs.**

Assistant Commissioner of Income Tax, Circle 26(2) and Another[1] and **Tamil Nadu Magnesite Ltd. vs. The Commissioner of Income-Tax and Another**[2].

8. *Per contra*, the learned Senior Standing Counsel for Income Tax Department submitted that the writ petition deserves to be dismissed on two major grounds.

9. Firstly, the writ petition has been filed at a much belated stage and therefore suffers from delay latches. Referring to the relief clause in the writ petition, the learned Senior Standing Counsel for Income Tax Department submits that the order under challenge is one which was passed as early as on 11.11.2019 and the present writ petition has been filed only in the year 2026, to be precise on 29.01.2026. Thus, the writ petition is being filed after more than 5 years and therefore the writ petition deserves to be dismissed on this ground itself.

10. The second ground on which the learned Senior Standing Counsel for Income Tax Department sought for dismissal of the writ petition is that the petitioner has an alternative statutory remedy of appeal available before the Income Tax Appellate Tribunal (for short the 'ITAT'). According to the learned Senior Standing Counsel for Income Tax Department, the petitioner knowing fully well the statutory remedies available to him has now come to the High Court, in fact

[1] (2020) 19 Supreme Court Cases 12

[2] 2010 SCC OnLine Mad 4450

after having failed at the level of the Commissioner of Income Tax (Appeals) (for short 'CIT (Appeals)') which itself would go to show that the petitioner has already availed the remedy available under the statute and the very same statute also prescribes for yet another remedy of second appeal before the ITAT, which the petitioner did not avail.

11. Having heard the contentions put forth on either side and on perusal of records, particularly taking into consideration the facts and submissions narrated in the writ affidavit, it is evidently clear that proceedings under Section 143(2) of the Act were initiated by the Department *vide* notice dated 23.09.2019. The petitioner entered appearance and submitted his response to the said notice on 08.10.2019 and finally an order under Section 143(3) of the Act was passed on 31.03.2021 accepting the returns submitted by the petitioner. There seems to be certain errors which have crept in the order passed by the Department and were sought to be rectified under Section 154 of the Act on more than a couple of occasions, which were partially accepted by the Department, against which also remedy of appeal was availed by the petitioner and that proceedings went on independently. However, in between intimation under Section 143(1) was issued on 11.11.2019. Admittedly, the petitioner had not challenged the same before any judicial forum assailing the competence and jurisdiction of the authorities in continuing with Section 143(1) proceedings in spite of the notice having been sent under Section

143(2) and order having been passed under Section 143(3). At a much belated stage, the petitioner did file an appeal before the CIT (Appeals) on 25.09.2024 and the CIT (Appeals) having found the delay in filing of appeal against the intimation dated 11.11.2019 to be more than 1751 days, dismissed the appeal *vide* order 24.09.2025 on the ground of delay. Yet another aspect which needs to be considered is that even though the appeal stood decided on 24.09.2025, the petitioner very well knows that there is a further remedy of appeal before the ITAT. Therefore, the petitioner ought to have gone to the ITAT challenging the order dated 24.09.2025 instead of preferring a writ petition.

12. This Bench finds much force in the argument of the learned Senior Standing Counsel for Income Tax Department when he raised an objection of the petitioner having not gone to the ITAT for ventilating his grievance and bypassing the said remedy has chosen to seek writ remedy. It is well settled proposition of law that writ jurisdiction under Article 226 of the Constitution of India is not to be exercised as a matter of routine. The said remedy is to be exercised only in exceptional circumstances where there is a breach of fundamental rights or there is a violation of the principles of natural justice or where the very competence and jurisdiction of the authority which has passed the order is under dispute.

13. What needs to be appreciated at this juncture, as has been discussed in the preceding paragraphs is that, the substantive relief which the petitioner has sought for is against the intimation dated 11.11.2019 issued Section 143(1) of the Act. The writ petition is now being filed after more than 5 years. In between, the petitioner cannot be said to be ignorant of the provisions of law as the petitioner has been prosecuting his case before the authority concerned against the proceedings drawn under Section 143(2) of the Act and the consequential order thereafter being passed under Section 143(3) of the Act. This itself goes to show that the petitioner has deliberately not chosen to challenge the said proceedings which indirectly gives an indication of the petitioner not having substantive grievance on the so-called intimation issued under Section 143(1) of the Act.

14. There is also much force in the argument of the learned Senior Standing Counsel for Income Tax Department that against the order passed by the CIT (Appeals) there is a remedy available under Section 253 of the Act before the ITAT, and the petitioner having already availed the remedy of first appeal available under the statute, there is no reason why the petitioner should not be permitted to relegate his remedy available under Section 253 of the Act before the ITAT. It would had been a different case altogether if the petitioner at the first instance would had approached the writ Court in the year 2019 itself or within a reasonable period of time from 11.11.2019 assailing the competence and jurisdiction of the authorities

in continuing with the proceedings under Section 143(1) when the proceedings under Section 143(2) and 143(3) have already been passed, which the petitioner did not avail. Having availed the remedy of appeal as is provided under the Act, it would be more appropriate if the petitioner ought to have challenged the order of the CIT (Appeals) by way of an appeal before the ITAT.

15. So far the judgment cited by the learned counsel for the petitioner in his pleadings so far as reliance on the judgment of the Hon'ble Supreme Court in the case of **Harbanslal Sahnia vs. Indian Oil Corporation Ltd.**[3] and other similar judgments, we are of the considered opinion that they are distinguishable insofar as the facts are concerned. In the said cases the situation or the facts were not similar to the facts in the present case, where the writ petition is firstly filed at a considerable belated stage and secondly having already availed the remedy of first appeal and bypassing the remedy of second appeal approached the High Court.

16. Since the objections raised by the learned Senior Standing Counsel for Income Tax Department was on the very tenability and maintainability of the writ petition, this Bench does not intend to venture into the merits of the case and reserving the right of the petitioner to avail the right of appeal under Section 253 of the Act, the instant writ petition stands dismissed.

[3] (2003) 2 SCC 107

17. As a sequel, miscellaneous petitions pending if any, shall stand closed. However, there shall be no order as to costs.

P.SAM KOSHY, J

NARSING RAO NANDIKONDA, J

Date: 30.04.2026
GSD