



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2004 OF 2011

M/s. Crawford Bayley & Co. .. Petitioner.

versus

Union of India & Ors. .. Respondents.

.....

Mr. Percy J. Pardiwala, Sr. Adv. with Ms. Aarti Sathe

for the Petitioner.

Mr. Suresh Kumar for Respondents.

.....

**CORAM : DR.D.Y.CHANDRACHUD &  
A. A. SAYED, JJ.**

**01 DECEMBER 2011.**

**ORAL JUDGMENT : (PER DR.D.Y.CHANDRACHUD, J.)**

1. Rule. Learned Counsel for the Respondents waives service. By consent taken up for final hearing on the request of learned Counsel for the parties.
  
2. The Petitioner, which is a firm of Solicitors, has challenged a communication dated **21 March 2011** by which a return of income filed in the electronic format has been treated as invalid on the ground that the ITR-V form had not been received by the Central Processing Centre of the Income Tax Department at Bangalore.
  
3. For the Assessment Year **2009-10** the Petitioner uploaded its return of income on **27 March 2010** on the official website of the Income Tax Department. The Petitioner received an electronically generated mail from the Department acknowledging the e-filing of the return of income. An acknowledgment number was electronically generated and furnished to the Petitioner (acknowledgment number **115760720270310**). On **5 April 2010** in accordance with the

instructions of the Department, the Petitioner posted a copy of the ITR-V Form duly signed by one of its partners. The Form was remitted by ordinary post since the instructions of the Department (Exhibit "D") specifically stipulated that the ITR-V should only be sent by ordinary post. It has been stated in the instructions that a form sent by Speed Post, Registered Post or Courier will not be accepted. The Form was required to be submitted on or before **30 September 2009** or within a period of sixty days whichever is later, from the date of transmitting the data electronically.

4. On **16 May 2010** the Petitioner received a communication stating that the ITR-V Form had not been received. The Petitioner was called upon to furnish a copy on or before **31 March 2010** or within a period of **120** days of the uploading of the electronic return data, whichever is later. The Petitioner has stated that the ITR-V Form was remitted under certificate of posting initially on **5 April 2010** and thereafter again on **18 May 2010**. On **10 November 2010**, the Petitioner

received a communication stating that the Form had not been received at the Centralized Processing Center. Hence, once again on **18 November 2010**, the Petitioner submitted a copy of the Form which was transmitted by ordinary post. By a communication dated **21 March 2011**, the Petitioner has been informed that though the electronic return was uploaded, it is deemed never to have been filed since it was not duly verified in terms of the provisions of Section **139** of the Income Tax Act, **1961**. The return is therefore, treated as invalid. By letters dated **1 April 2011** and **11 May 2011** the Petitioner once again reiterated that the ITR-V Form had been transmitted on **5 April 2010**, **18 May 2010** and **18 May 2010**. Furthermore it was pointed out to the Department that though on **5 April 2010** a representative had been deputed to Bangalore to deliver the Form, she was not allowed to meet the Assistant Commissioner of Income Tax in the Central Processing Centre.

**5.** The Court is informed that the problem has arisen in the present case since for Assessment Year **2009-10**

arrangements were not made by the Income Tax Department for verification of returns uploaded electronically by digital signature. Such an arrangement has now been made from Assessment Year **2011-12**.

6. Section **139 (9)** of the Income Tax Act, **1961** stipulates that where the Assessing Officer considers that a return of income furnished by the assessee is defective, he may intimate the defect to the assessee and furnish an opportunity to rectify the defect within a period of fifteen days or within such further period which, on an application made in this behalf, the Assessing Officer may allow. If the defect is not rectified within a period of fifteen days or the extended period as allowed, the return shall notwithstanding the provisions of law, be treated as an invalid return and the provisions of the Act shall apply as if the assessee has failed to file the return. The proviso to sub-section **(9)** stipulates that where the assessee rectifies the defect after the expiry of the said period of fifteen days or the further period allowed, but before the

assessment is made, the Assessing Officer may condone the delay and treat the return as a valid return. The explanation to sub-section (9) provides that a return of income shall be treated as defective unless all conditions prescribed therein are fulfilled. Amongst the conditions, the condition in clause (a) is that the annexures, statements and columns in the return of income relating to computation of income chargeable under each head of income, computation of gross total income and total income have been duly filled in.

7. Treating a return filed by the assessee as an invalid return has serious consequences. Parliament has in sub-section (9) of Section 139 made adequate provisions for the Assessing Officer to furnish in the first instance a period of fifteen days to rectify a defect in the return. A provision has been made for extension of the period within which the defects have to be rectified. Thereafter under the proviso, it is stipulated that where an assessee rectifies a defect even after the expiry of fifteen days or the further period allowed, but

before an assessment is made, the Assessing Officer may condone the delay and treat the return as a valid return. These are powers which are vested in the Assessing Officer.

8. Though the Income Tax Department made a provision for electronic filing of returns, it appears that the ITR-V Form containing the due verification of the return of the assessee was required to be remitted only by ordinary post. The instructions which were furnished to assessee, a copy of which has been placed on record, specifically stipulate that the ITR-V form should not be sent either by registered post or by speed post or courier. The assessee has furnished adequate material before the Court in support of its contention that having filed the return electronically, it had also submitted the ITR-V form by ordinary post. The assessee has done so on **5 April 2010, 18 May 2010 and 18 November 2010**. In that view of the matter, we are of the view that the communication issued by the Income Tax Department on **21 March 2011** is thoroughly misconceived. The order of assessment for

assessment year **2009-10**, the Court is informed by the learned Counsel for the assessee, has still not been passed. Hence, the provisions of Section **139 (9)** can be fulfilled by permitting the assessee to file a verification of the return before the Assessing Officer within a period of one week from today. Learned Counsel appearing on behalf of the Petitioner states that this would be done without any delay and in any event within a week. In that view of the matter and with the aforesaid direction, we quash and set aside the impugned order dated **21 March 2011**.

**9.** Rule is made absolute in the aforesaid terms.  
There shall be no order as to costs.

**(Dr. D.Y. Chandrachud, J.)**

**(A. A. Sayed, J.)**

