HC-KAR

NC: 2026:KHC:51326
WP No. 5330 of 2026

CNR: KAHC010111652026

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE S SUNIL DUTT YADAV

WRIT PETITION NO. 5330 OF 2026 (T-IT)

BETWEEN:

1. SHRI MUKESH BANSAL
   S/O SHRAWAN KUMAR BANSAL,
   AGED ABOUT 51 YEARS
   UNIT 4, OZONE RESIDENZA
   BENGALURU,
   KARNATAKA - 560 102

... PETITIONER

(BY SRI. PRASHANTH S SHIVADASS., ADVOCATE
SMT. GAYATHRI G.S., ADVOCATE
SRI PRAHALAD SRIRAM, ADVOCATE AND
SRI SIDDHANT KISHANPURIA, ADVOCATE)

AND:

1. PRINCIPAL COMMISSIONER OF INCOME TAX,
   BENGALURU-2
   BMTC BUILDING, 80 FEET ROAD,
   6TH BLOCK, NEAR KHB GAMES VILLAGE,
   KORAMANGALA, BENGALURU,
   KARNATAKA - 560 095

... RESPONDENT

(BY SRI. ARAVIND KAMATH, ASG FOR
SRI E.I. SANMATHI, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECTING THE LD. RESPONDENT TO QUASH AND SET ASIDE

THE IMPUGNED REVISIONARY PROCEEDINGS INITIATED VIDE IMPUGNED NOTICE FOR HEARING DATED 13.01.2026 BEARING DIN NO. ITBA/REV/F/REV1/2025-26/1084741964(1) ENCLOSED AT ANNEXURE-A, AS THE SAME HAS BEEN INITIATED WITHOUT JURISDICTION AND ETC.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON 14.08.2026, AND COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE S SUNIL DUTT YADAV

CAV ORDER

(PER: HON'BLE MR. JUSTICE S SUNIL DUTT YADAV)

The present petition is filed by the Assessee calling in question the validity of the revision proceedings initiated through the impugned notice at Annexure-'A' dated 13.01.2026.

2. The notice issued at Annexure-'A' dated 13.01.2026 is the notice for hearing in respect of the revision proceedings under Section 263 of the Income Tax Act, 1961 ['I.T. Act']. The power of revision was sought to be exercised as against the 'order' under Section 143(1) of the I.T. Act dated 12.02.2025, whereby, the revised

return of the Assessee for the Assessment Year 2019-2020 was processed and in terms of the "order", refund of Rs.27,13,38,330/- came to be ordered. This order, the Revenue construes to be the one that is prejudicial to the interest of Revenue in terms of *Explanation-2* to Section 263 of the I.T. Act.

3. The brief facts leading to the order of refund are that the Assessee had filed return of income for the Assessment Year 2019-2020 declaring a total income of Rs.2,31,73,53,807/- with a tax liability of Rs.82,55,30,197/- and claiming refund of Rs.6,07,570/-. The return was processed under Section 143(1) of the I.T. Act and refund as noticed above was determined.

Thereafter, the Assessee is stated to have filed an application on 09.01.2024 before the Central Board of Direct Taxes, New Delhi, seeking condonation of delay under Section 119(2)(b) of the I.T. Act and permission to file a revised return of income for the Assessment Year 2019-2020.

4. The application for condonation of delay under Section 119(2)(b) of the I.T. Act came to be considered on 19.12.2024 and thereafter the Assessee has filed a revised return of income for the Assessment Year 2019-2020 declaring income and claiming refund. The filing of revised return resulted in Assessee's claim that Repurchase of Employee Stock Options [ESOPs] by the former employer was treated as 'Capital Gains' in contradistinction to earlier consideration as 'Salary'. Consequently, the Assessee was held to be entitled for refund with interest.

5. It is to be observed that any finding recorded on merits relating to treatment of 'Repurchase of ESOPs' would have a bearing on substantive adjudication which is beyond the scope of the present petition. The present petition is being confined to the following question:-

"Whether the intimation under Section 143(1) of the I.T. Act could be treated to be an order "for the purpose of exercise of power of revision under Section 263 of the I.T. Act?".

6. It is the contention of the petitioner-Assessee that the power under Section 263 could be exercisable only against an order passed in the proceedings under the I.T. Act, while an intimation under Section 143(1) is not an order.

7. It is contended that an automated acknowledgment generated electronically by Centralised Processing Centre [CPC] with limited adjustments involving no application of mind and no adjudication on merits would not constitute such intimation under Section 143(1) of the I.T. Act to be an order.

8. It is further contended that the Legislature has consciously distinguished between an 'Order' and 'Intimation' by omission in the Finance Act, 1999 of the

Explanation to Section 143 which provided for deeming an 'Intimation' to be an 'Order' for the purposes of Section 246 and 264 of the I.T. Act. Reliance was also placed on the interpretation of Apex Court in **Assistant Commissioner of Income Tax** v. **Rajesh Jhaveri Stock Brokers Private Limited**[1]**[*Rajesh Jhaveri*]** wherein, it has observed as follows:-

> *"15. ... In the scheme of things as noted above, the intimation under Section 143(1)(a) cannot be treated to be an order of assessment...."*

9. It was further contended that there were specific mechanisms to address errors in an intimation under Section 143(1), such as, by way of Rectification under Section 154, Scrutiny Assessment under Sections 143(3), 144 and 147 of the I.T. Act. Accordingly, recourse to proceedings under Section 263 when substantive remedy is available, was impermissible.

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[1](2008) 14 SCC 208

10. It was also contended that even if it was permissible to exercise power under Section 263 of the I.T. Act, the order ought to be 'erroneous' and 'prejudicial to the interest of the Revenue' to permit intervention. It was contended that both the said requirements were to be fulfilled cumulatively. It was contended that compensation for cancellation of unexercised vested ESOPs was a Capital Receipt and reliance is placed on the order of this Court in **Manjeet Singh Chawla** v. **Deputy Commissioner of TDS**[2].

11. It was also contended that the power of revision under Section 263 can be exercised only against the orders passed by the Assessing Officer and Authorities subordinate to the Revisional Authority and effort to overreach the order passed under Section 119(2)(b) passed by the Principal Chief Commissioner by resort to

[2]W.P.No.20212/2023 decided on 02.06.2025

power under Section 263 to set aside the intimation under Section 143(1) of the I.T. Act was permissible.

12. The respondents have contended that the impugned notice at Annexure-'A' dated 13.01.2026 issued in the proceedings under Section 263 not being a final order, the present petition filed was premature.

13. It is further contended that the grant of refund after processing the revised return was erroneous. That the grant of interest under Section 244A of the I.T. Act was in gross contravention of CBDT Circular bearing No.9/2015 dated 09.06.2015 which bars interest on belated refund claims. That the ESOPs were granted during the subsistence of the employer and employee relationship and the compensation received on a monetary benefit flowing from the employer and employee nexus is taxable as 'perquisites' under the head 'Salary' under Section 17(3) of the I.T. Act.

14. It is also contended that there is no provision in the CBDT Circular bearing No.11/2024 dated 01.10.2024 for condonation of delay in filing revised return and that condonation of delay under Section 119(2)(b) is available only for belated original returns.

15. Heard both sides.

16. Sri. Prashanth S. Shivadass, learned counsel has advanced arguments on behalf of the petitioner and learned Additional Solicitor General of India Sri. Arvind Kamath has advanced arguments on behalf of the respondent.

17. At the outset, insofar as the contention that the order under Section 263 of the I.T. Act is amenable to challenge by way of appeal and accordingly, the petitioner ought not to have filed the present writ petition, the said contention requires to be rejected in light of the settled legal position.

The entertainment of writ petition rests on the exercise of judicial discretion of the Court. The distinction between maintainability and entertainability requires to be kept in mind. While existence of an alternative remedy is not an absolute bar for entertainment of writ petition, the writ petition could be entertained while proceedings are without jurisdiction and on other grounds as enumerated in **Whirlpool Corporation** v. **Registrar of Trade Marks, Mumbai and Others**[3].

18. Where writ petition could be disposed of on a pure question of law, the Court may entertain the writ petition without relegating the petitioner to avail of the substantive alternative remedy.

19. In the present case, it is the contention of the petitioner that the proceedings under Section 263 cannot be taken up, as the 'Order' sought to be revised is an intimation under Section 143(1) of the I.T. Act and not an

[3] (1998) 8 SCC 1

order. Such issue being a jurisdictional issue, this Court could take up such issue as presented in the present writ without relegating the parties to a substantive remedy.

20. The power conferred under Section 143(1) of the Act is processed with limited scope of permissible adjustments.

21. Section 143(1)(a) of the I.T. Act as on 2018 reads as follows:

> *"(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."*

22. For the purpose of exercise of power under Section 263 of the I.T. Act, the records of any proceedings could be called if the Authority considers an order passed by the Assessing Officer to be erroneous insofar as it is prejudicial to the interest of Revenue.

23. The *sine qua non* is that the proceedings must contain an order. The question whether intimation under Section 143(1) is an order was considered by the Apex Court in ***Rajesh Jhaveri (supra)***.

24. The Apex Court in ***Rajesh Jhaveri (supra)*** while tracing the legislative changes to Section 143(1)(a) has taken note of the intention of the Legislature, i.e., to minimise the departmental work to scrutinise each and every return and to concentrate on selective scrutiny of returns. It is noticed that under certain circumstances, acknowledgement of return may also be deemed to be an intimation. Observing that the acknowledgment issued is by the ministerial staff, an acknowledgment if deemed to

be an intimation issued by such ministerial staff could still not be construed to be an assessment and accordingly, would not be an Assessment Order.

25. No doubt, the decision in ***Rajesh Jhaveri (supra)*** was in the context of whether an intimation under Section 143(1) could be construed to be an order to enable Section 148 proceedings for reassessment of an Assessment Order as reflected under an intimation under Section 143(1) of the I.T. Act. In ***Rajesh Jhaveri (supra)***, the emphatic finding was that there was no assessment at the stage of Section 143(1)(a) and accordingly, the question of reassessment did not arise.

26. The legislative scheme provides for an intimation under Section 143(1), the limited scope for adjustment relates to arithmetical errors in the return, incorrect claim if it is apparent from any information in the return and in terms of the latest amendment disallowance of loss claimed as against set off which was claimed

beyond due date. The Returns of the preceding previous year may also be looked into for inconsistency in the return. Section 143(1) though has undergone many changes, as it stands on date, the *First Proviso* to Section 143(1)(a) provides that adjustment may be made after intimation. It is clear that the adjustments permitted under Section 143(1) are narrow and limited with not much discretion. A prominent aspect of such processing under Section 143(1) relates to a Centralised Processing of Returns Scheme, 2011 which is stated to be more or less automated.

27. In contradistinction to such processing, Section 143(2) which provides for scrutiny of returns envisages a procedure whereby the prescribed Authority of the Revenue in order to ensure that the Assessee has not 'understated the income or has not computed excessive loss or has not underpaid the tax' may issue a notice calling upon the Assessee to show cause. The procedure

would culminate in an Assessment Order. The scope of enquiry and the procedure followed under Section 143(2) results in traversing beyond the details of the return to decipher inconsistency as envisaged under Section 143(1) of the I.T. Act.

28. It is only in light of such two different procedures that Section 143(1) may continue to be construed to be an 'Intimation' only, while Section 143(2) which goes beyond the return itself would culminate in an Assessment Order.

29. Though it is contended that ***Rajesh Jhaveri (supra)*** was in the context of legislative provision as on Financial Year 2000-2001, while there have been legislative amendments, including amendment in the year 2008 which would make the law laid down in ***Rajesh Jhaveri (supra)*** inapplicable, such contention requires rejection.

30. This is in light of the scope of Section 143(1) in contradistinction to an Assessment Order passed after process of scrutiny under Section 143(2) in light of discussion at para-27. The legislative changes made post 2000 do not have the effect of altering the distinction between the narrow adjustments, if any, permissible at the stage of intimation under Section 143(1) vis-à-vis the re-doing of assessment proceedings traversing beyond the returns or even previous returns by going into other material while dealing with scrutiny under Section 143(2) of the I.T. Act.

31. It is also to be kept in mind that the order under Section 119(2)(b) makes a specific finding that the cancellation of option granted to the Assessee should be offered to tax under 'Income from Capital Gains' and not under the head of 'Salary'. No doubt, the finding as regards merits of assessment in the order passed under Section 119(2)(b) of the I.T. Act is only incidental, if

however, the Department was of the view that the observations made in the order under Section 119(2)(b) granting permission to file a revised return were erroneous, the Department could have subjected the intimation under Section 143(1) made in the context of a revised return to scrutiny proceedings under Section 143(2) of the Act.

32. Having lost out on time to initiate proceedings under Section 143(2), the Revenue cannot readily resort to the proceedings under Section 263 by construing without establishing that the intimation under Section 143(1) of the I.T. Act into an Assessment Order.

33. The Revenue's contention that an intimation under Section 143(1) ought to be treated as an order insofar as the intimation under Section 143(1) would be deemed to be a notice of demand must be read in proper context. No doubt, the intimation under Section 143(1) may have the effect of a notice of demand, but to construe

such proceedings to be preceded by an order of assessment would be erroneous. The treating of an intimation under Section 143(1) as a notice of demand is by a fiction of law which cannot be extended to deeming the passing of an Assessment Order prior to an intimation.

34. It is the view of the Bombay High Court in **Commissioner of Income-Tax** v. **Anderson Marine & Sons, (P.) Ltd.,**[4] [***Anderson Marine***] to the effect that quantification of sum determined to be payable in terms of Section 143(1) which is deemed to be a notice of demand would be suppose that it is preceded by an order of assessment.

35. Such an interpretation cannot be accepted insofar as fiction created under the *Proviso* to Section 156 is only to the extent of intimation under Section 143(1) amounting to a notice of demand. Such presumption in

[4] (2004) 139 Taxmann 16 (Bombay)

law must be construed strictly and cannot be extended to corollaries even if the same sounds logical.

36. A presumption in law is based on a fiction created by legislative intent and cannot be extended to construe the notice of demand being preceded by an order.

37. The observations in ***Rajesh Jhaveri (supra)*** at para-16 is on same lines, which reads as hereunder:-

> *"16. ... The intimation under Section 143(1)(a) was deemed to be a notice of demand under Section 156, for the apparent purpose of making machinery provisions relating to recovery of tax applicable. By such application only recovery indicated to be payable in the intimation became permissible. And nothing more can be inferred from the deeming provision. Therefore, there being no assessment under Section 143(1)(a), the question of change of opinion, as contended, does not arise."*

38. Accordingly, the conclusion arrived at by the Bombay High Court in ***Anderson Marine (supra)*** cannot be accepted.

39. The further logic that sending of an intimation amounts to acceptance of self-assessment and accordingly would constitute an order as observed in ***Anderson Marine (supra)*** also cannot be an acceptable interpretation, in light of Apex Court's observation in ***Rajesh Jhaveri (supra),*** that acknowledgement being by a ministerial staff, it cannot constitute assessment.

40. The term 'order' would refer to the reflection of a conclusion in an adjudicatory process. Such would be the meaning to be assigned for the purpose of construing whether the order could be tested by an adjudicatory hierarchy of grievance redressal. Such creation of a grievance redressal process must be by a conscious legislative mandate. Where the scheme of Section 143(1) itself would indicate that an intimation is issued after a

minimal inquiry, many a time based only on records before the Authority, there cannot be imputed the process of an adjudicatory exercise preceding such intimation.

41. No doubt, Sri Arvind Kamath, learned Additional Solicitor General appearing on behalf of the Revenue has contended that the structure of Section 143 has undergone a change with the insertion of *Proviso* to Section 143(1) which provides that where adjustments are sought to be made as enumerated under Section 143(1)(a)(i) to 143(1)(a)(vi), there must be an intimation given to the Assessee of such adjustment either in writing or in electronic mode with a further stipulation that the Authority is to look into the response received from the Assessee before resorting to such adjustment.

42. Though the insertion of *Proviso* by way of amendment vide Finance Act, 2016 has enlarged the scope of the process of adjustment with notice to the Assessee, but then the question that still begs to be

answered is whether an intimation under Section 143(1) *sans* adjustment would still partake the character of an order.

43. It is necessary to notice that in terms of Section 246 which provides for appealable orders makes intimation under Section 143(1) where the Assessee objects to making of adjustment is treated to be an order. This perhaps reflects a situation where an intimation under Section 143(1) without adjustment would remain an intimation, while an intimation under Section 143(1) after adjustments as envisaged under the *Proviso* would be treated to be an order. The corollary would be that, only an intimation under Section 143(1) after adjustment would be treated to be an order under Section 246 and 246A of the I.T. Act. The right of an Assessee is preserved, where adjustment is made under Section 143(1) permitting him to challenge the intimation by resorting to a grievance

mechanism of appeal under Section 246 and 246A of the I.T. Act.

44. Except for an intimation under Section 143(1) with adjustments, the intimation under Section 143(1) cannot be treated to be an order for the purpose of Section 246 and 246A of the I.T. Act. Further, there would be a possibility for the Revenue also to exercise power under Section 263 as against such intimation after adjustment which would be an order, if the adjustment is prejudicial to the interests of the Revenue. Such a circumstance may arise, if the adjustment could have been to a greater extent thereby furthering the interests of the Revenue.

45. If that were to be so, as regards other intimations under Section 143(1), the earlier position of law as laid down in ***Rajesh Jhaveri (supra)*** would remain and would not call for a re-look.

46. In the present case, undisputedly, the intimation under Section 143(1) is *sans* any adjustment. If that were to be so, the intimation under Section 143(1) could not be construed to be an order.

47. It is also necessary to notice that in the present case, subsequent to condonation of delay in terms of the order passed under Section 119(2)(b), the Assessee filed a revised return claiming the 'Repurchase of ESOPs' to be treated as 'Capital Gains' instead of 'Salary'. An intimation under Section 143(1) accepting such a stand could not be subject to the power of interference by virtue of proceedings under Section 263 of the I.T. Act.

48. Para-5 of the notice forhearing issued under Section 263 would indicate the intention of Revenue regarding the change in head of 'Income'. Para-5 reads as follows:-

> *"5) On reviewing the order u/s 143(1) of the Income Tax Act, 1961 dated 12/02/2025, it is found that the assessee has claimed Capital gains of*

Rs.230,36,53,662/- on compensation received from his employer on repurchase of unexercised stock options. However the TDS has been deducted u/s 192 of the Income Tax Act, 1961. During the F.Y. 2018-19 the assessee was working as a salaried employee of M/s Flipkart Internet Pvt. Ltd. as Head of Commerce and advertising business. Thus there was an employee-employer relationship between the assessee, Shri Mukesh Bansal and M/s Flipkart Internet Pvt. Ltd. at the time of repurchase of the stock options by the company. It is pertinent to note here that any amount received from a former employer in connection with his employment/ termination is also taxable as salary as per section 17(3) of the Income Tax Act, 1961. In the computation filed along with the original return of income for the AY 2019-20, the assessee had also offered this amount as profits in lieu of salary u/s 17(3) of the Income Tax Act, 1961. Therefore, the assessee's claim of reduced tax liability based on reporting the amount received from his employer as capital gains is erroneous. Further it is prejudicial to the interest of the revenue because the assessee has reduced the tax liability by changing the head of income whereby the long term capital gains is taxable @20% instead of the normal slab rates applicable to salary income i.e. 30% + 15% surcharge + 3% cess.

Furthermore, in the order u/s 143(1) of the Income Tax Act, 1961 dated 12/02/2025, the assessee has been granted interest u/s 244A of the Income Tax Act, 1961 of Rs.9,63,25,097/-, which is in violation of the CBDT Circular No.9/2015 dated 09/06/2015 as further amended by Circular No.11/2024 dated 01/10/2024 which states that the interest u/s 244A of the Income Tax Act, 1961 is not allowable on belated claim of refunds. Hence the order u/s 143(1) of the Income Tax Act, 1961 dated 12/02/2025 is deemed to be erroneous in so far as it is prejudicial to interest of revenue, in terms of Explanation 2 to Section 263 of the Income Tax Act, 1961."

49. The Assessing Officer under Section 143(1) may be of the view that such treatment by the Assessee of 'Repurchase of ESOPs' cannot be treated as income from 'Capital Gains', but must be treated as 'Salary'. However, such inquiry would immediately take the proceedings outside the purview of Section 143(1). The High Court of Madhya Pradesh in **Amir Uddin S/o Kamruddin Bohra** v. **Income Tax Officer, Indore and Another**[5]**,** has held

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[5] 2001 SCC OnLine MP 19

that the scope of adjustment under Section 143(1) as enumerated still would not permit an adjustment whereby the Assessing Authority is of the view that there has to be a change in the head of 'Income'. Such process of adjudication would be permissible only under the proceedings under Section 143(2) of the I.T. Act.

50. In light of the discussion made above, where the intimation under Section 143(1) does not amount to an order, the question of resorting to Section 263 in the present factual matrix does not arise. The further question that the unavailability of time to resort to Section 143(2) as against an intimation under Section 143(1) would still keep open the remedy under Section 263 need not be answered, as unless the intimation under Section 143(1) amounts to an order, resort to Section 263 cannot be taken.

51. This Court finds that the impugned notice issued at Annexure-'A' dated 13.01.2026 is clearly one

without jurisdiction and requires to be set aside and accordingly, the notice at Annexure-'A' dated 13.01.2026 is set aside.

The petition is accordingly ***allowed.***

Sd/-
(S SUNIL DUTT YADAV)
JUDGE

VGR