



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 4748 OF 2022

Kusharaj Madhav Bhandary ...Petitioner
Versus
Income Tax Officer, Ward – 17(2)(1), Mumbai & Ors. ...Respondents

Mr. Rahul Sarda i/b Ms. Heelam Jadhav for Petitioner.
Ms. Sushma Nagaraj a/w Ms.Vibhuti K. i/b Sushma Nagaraj for
Respondents.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.

DATE: 23 OCTOBER 2024

P.C.

1. Rule. Rule made returnable forthwith. Respondents waives service. By consent of the parties, heard finally.
2. The petitioner who is a salaried individual is before the Court, in this petition under Article 226 of the Constitution of India, praying for the following reliefs:

“(a) that this Hon'ble Court be pleased to permit the Petitioner to make an application under section 270AA of the Income-tax Act, 1961 for Assessment Year 2017-18 within such time as this Hon'ble Court deems fit after the disposal of the application dated 11th April 2022 of the Petitioner under section 154 of the Act, by passing the following orders and directions:

- i. issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate writ, order or direction under Article

226 of the Constitution of India directing the Respondents to dispose of the application dated 11th April 2022 filed by the Petitioner under section 154 of the Act within such time as this Hon'ble Court deems fit and further be pleased to direct the Respondents to raise a fresh/ proper demand under section 156 of the Act after giving credit of the taxes paid by the Petitioner, after giving the Petitioner an opportunity of being heard;

ii. issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India calling for the records and after examining the legality and propriety thereof be pleased to quash and set aside the order dated 27th September 2022 passed by the Respondents under section 270A of the Act;

and this Hon'ble Court be further pleased to direct the Respondents to consider the said application under section 270AA of the Income-tax Act, 1961, on merits;

(b) that pending the hearing and final disposal of the present Petition, this Hon'ble Court may be pleased to stay the effect, implementation and operation of the order dated 27th September 2022 passed by the Respondents;

(c) that pending the hearing and final disposal of the present Petition, this Hon'ble Court may be pleased to direct the Respondents to decide the application for rectification dated 11th April 2022 filed by the Petitioner in accordance with the law;

(d) for ad-interim relief in terms of prayers (b) & (c) above;

(e) for costs of this Petition; and

(f) for such further and other reliefs as the nature and circumstances of the case may require.”

3. The relevant facts are required to be noted. The assessment year in question is 2017-18.

4. The petitioner received salary from his employer on which a sum of Rs. 26,43,323/- was deducted as tax at source. Form No. 16 was issued by the

employer accordingly showing TDS of Rs. 26,43,323/- also such amount was reflected in the Form No. 26AS, copies of which are placed on record.

5. On 19 March 2021, notice under Section 148 of the Income Tax Act, 1961 (for short “**the Act**”) was issued to the petitioner for the assessment year in question. Responding to such notice on 23 April 2021, the petitioner filed return of income declaring total income at Rs. 85,77,740/-. Obviously, the petitioner sought a credit of TDS amount of Rs. 26,43,323/- as deducted by the employer at source part of form 16 and also in form 26AS.

6. Between the period 24 April 2021 to 30 March 2022, respondent No.1 carried out assessment proceedings by issuing notices which were duly responded by the petitioner. The assessment proceedings were concluded by an Assessment Order dated 30 March 2022 being passed by the Assessing Officer. However, what is significant is that while computing the tax liability of the petitioner, the Assessing Officer did not give credit of the TDS of Rs. 26,43,323/- and charged interest amounting to Rs. 29,00,303/- for alleged non-payment of taxes. Consequently, the Assessing Officer / Respondent No.1 raised a demand of Rs. 55,43,799/- also on an even date, the notice proposing to impose penalty on the petitioner under Section 270A of the Act for under-reporting of the income was issued to the petitioner. The case of the petitioner is that since non-grant of the TDS in the Assessment Order dated 30 March 2022 was a “mistake apparent on a face of the record”, the

petitioner made an application under Section 154 of the Act seeking rectification of such mistake, such application was filed on 11 April 2022.

7. However, on account of some technical difficulties, such application could not be uploaded on the portal on the said day. This was pointed out to the respondents by filing a grievance on the portal of the respondents on 12 April 2022. It so happened that rectification rights were internally transferred to respondent No.1 by Income Tax Department on 26 April 2022. Immediately, on the next day i.e. 27 April 2022, the petitioner filed his rectification application dated 11 April 2022 with respondent No.1 i.e. on 27 April 2022.

8. Also, the petitioner filed its reply to the penalty notice on 9 May 2022 *inter alia* contending that the Assessment Order had a mistake apparent on the face record as the TDS amount has not been accounted for and further actions which were initiated were in fact totally unwarranted. It appears that on one hand, the rectification application was not being disposed of and on the other hand, respondent No.1 proceeded with the penalty proceedings, inasmuch as on 10 August 2022, a notice was issued to the petitioner so as to proceed with the penalty proceedings. A reply to this notice was filed by the petitioner on 18 August 2022 *inter alia* pointing out the pendency of the rectification application.

9. The penalty proceedings were, however, taken forward and an order dated 27 September 2022 came to be passed imposing a penalty of Rs. 52,87,072/-, this was resorted when the rectification application itself was pending. It is in these circumstances, the present petition came to be filed by the petitioner on 3 November 2022.

10. A perusal of the record would indicate that this Court had from time to time passed interim orders, and more significantly of directing respondent No.1 to dispose of petitioner's rectification application, as also, directing that no further proceeding shall be initiated against the petitioner under the penalty order dated 27 September 2022.

11. In pursuance of the orders passed by this Court on 3 January 2023, respondent No.1 disposed of the rectification application allowing credit of the TDS of Rs. 26,43,323/-. Consequently, a fresh demand for tax of Rs. 303/- was issued to the petitioner on 3 January 2023 which was immediately complied by the petitioner on 5 January 2023, when the petitioner made the tax payment of Rs. 303/-.

12. On the backdrop of the pendency of the rectification application as also considering that there is a penalty order passed against the petitioner, the petitioner, had also moved an application under Section 270AA praying for grant of immunity which came to be filed on 7 January 2023. Also written

submissions on such application were filed, however the said application is stated to be pending.

13. It is on the above conspectus, the proceedings are before us. The pleadings on the petitioner are complete. Reply affidavit is placed on record. Rejoinder affidavit is also filed.

14. Learned counsel for the petitioner would submit that the case of any under reporting or misreporting as initially being asserted on behalf of the department has certainly proved to be incorrect, in view of the rectification order dated 3 January 2023 and the compliance of the rectification order namely a tax demand of Rs. 303/- being deposited by the petitioner.

15. Ms. Nagaraj, learned counsel for the revenue would also not dispute the factual matrix and would also contend that the rectification order in fact would bring about a quietus insofar as the issue was concerned, and as arising under the Assessment Order dated 30 March 2020 and the demand and penalty proceedings taken solely on the basis of the Assessment Order dated 30 March 2022.

16. In our opinion, the petitioner would be correct in his contention that in view of the subsequent developments and in pursuance of the orders passed by this Court, a rectification order was passed. Also the demand raised under the rectification order, which was for payment of tax of Rs.303/- was

complied by the petitioner. In this view of the matter, the penalty proceedings are also rendered inconsequential as the very foundation of such penalty proceedings stood extinguished in view of rectification order being passed. Admittedly, the demand and penalty proceedings under the Assessment Order dated 30 March 2022 would lose their sanctity, in view of the rectification order dated 3 January 2023, as necessarily, the assessment order has merged into the rectification order dated 3 January 2023.

17. We may observe that in view of the clear position which was brought about from the compliance of the rectification order 3 January 2023, the application of the petitioner under Section 270AA of the Act although was filed on 7 January 2023, need not be taken forward. This for the reason that in view of the order dated 3 January 2023, passed on the rectification application of the petitioner, the issue in regard to the demands as also the penalty or any other issue which would possibly arise under the Assessment Order dated 30 March 2022, which was apparently held to be not correct, was accordingly interfered in the rectification proceedings. Thus, the assessment order as originally passed cannot continue to prejudice the petitioner for any actions to be taken thereunder. In the aforesaid circumstances, we are inclined to allow the petition in terms of following order:

ORDER

i. The order dated 27 September 2022 passed by respondent No.1 under Section 270A is quashed and set aside.

ii. As the entire basis of the Assessment Order dated 30 March 2022 stands extinguished, no proceedings under the said order ought to be taken against the petitioner.

iii. The petitioner's application under Section 270AA also ought not to be taken forward in view of the fact that the order dated 3 January 2023 has rendered the assessment order dated 30 March 2022 inconsequential.

15. Petition stands disposed of in the aforesaid terms. No costs.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)