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Priya Soparkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11043 OF 2024

Nirmalkumar Mulchand Puruswani ...Petitioner
Versus
Income Tax Officer, Ward 6(3), Pune and ors. ...Respondents

WITH

WRIT PETITION NO. 11044 OF 2024

Mr. Sanket S. Bora with Ms. Vidhi Punmiya, Mr. Amiya R. Das and Ms. Unnatii Thakkar i/by M/s SPCM Legal, Advocates for the Petitioners in both the petitions.
Mr. Vikas T. Khanchandani, Advocate for the Respondent in WP No.11043 of 2024.
Mr. Akhileshwar Sharma with Ms. Shradha Worlikar, Advocates for the Respondent in WP No.11044 of 2024.

CORAM M.S. Sonak &
Jitendra Shantilal Jain, JJ.
DATED: 17th March 2025

PC *(Per M. S. Sonak, J.)*:-

1. Heard learned counsel for the parties.

2. Rule. The Rule is made returnable at the consent of the learned counsel for the parties.

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3. The learned counsel for the parties agree that common judgment and order can dispose of both these petitions. Though the petitions relate to different assessees, the issue arises from the same raid and the common ITAT order dated 31st July 2006. We dispose of these petitions by a common order, treating Writ Petition No.11043 of 2024 as a lead petition.

4. The Petitioners' grievance is that the time limit for giving effect to the Tribunal's order dated 31st July 2006 has long expired. Still, by not issuing the order giving effect, refunds of Rs.6,03,482/- and Rs.5,98,274/- are being denied to the Petitioner. The learned counsel for the Petitioners points out that such refunds were due because of taxes paid under the assessment orders. He submits that such inaction and delay violate Articles 300A and 265 of the Constitutions of India. He submits that such delay is also arbitrary by Article 14 of the Constitution of India.

5. On 13th January 2025, after hearing the learned counsel for the parties, we made the following order:-

> "1. Heard learned counsel for the parties.
>
> 2. The learned counsel for the parties states that the issues raised in both petitions are similar, and therefore, they may be considered together.
>
> 3. In both these petitions, the ITAT, vide its order dated 31 July 2006, has set aside the impugned assessment orders and restored the matter to the AO for a *de-novo* decision as per

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the observations made in the ITAT orders. The AO was also directed to provide an adequate hearing opportunity to the assesses.

4. The record shows, and it is not even disputed, that the ITAT order dated 31 July 2006 was communicated to the department concerned. The complaint in these petitions is that though almost 16 years have elapsed, the concerned AO has not made any assessment orders according to the remand by the ITAT. The learned counsel for the Petitioner submits that the Petitioners have been deprived of their refund for almost 17 years, and such retentions of the amount by the department is arbitrary and violates constitutional provisions.

5. The Respondents have filed affidavits before us. Apart from trying to blame the Petitioner for not pursuing the matter diligently, there is an acknowledgment that case papers are not traceable since more than 10 years have elapsed.

6. In paragraphs 9 and 10 of the affidavit filed by Mary Robin Abraham, in Writ Petition No.11043 of 2024, it is stated as follows: -

"9. The department has undergone restructuring in 2001 as well as 2014 wherein there was major upheaval of jurisdiction of Assessing Officers as well as CIT charges. The present jurisdiction of the Respondent 1 is assigned only from November, 2014. Prior to this period, the charge of Respondent 1 had jurisdiction over salary assesses. The Petitioner assessee had never raised this

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issue before any forum or before the Department till the year 2022 as Petitioner has not produced any document to prove any correspondence made on the issue prior to the year 2022. It is beyond comprehension as to why an assessee who has been regularly filing his return of income with tax payment and claiming of refund, wherever due, forgot his claim of refund for 16 long years.

10. It is in public domain that the processing of return and keeping of record in the Respondent Income Tax department has undergone several changes. It has moved from manual record to computer record. A Software called ITD was initially introduced which was subsequently migrated when ITBA was adopted. Further, the PAN of assessee has been with different Jurisdictional AOs from 2002 to 2022, the details of which are annexed herewith and marked as EXHIBIT 'A'."

7. In our opinion, the above averments are quite vague. No details are provided about the officials responsible for the maintenance of records and if any action has taken place against such officials for failure to retain such records. The affidavit also does not explain why no orders for giving effect to the ITAT's remand orders were made within the prescribed period of limitation and what action is taken against the officials responsible for not making such orders. From the records, we find that these were such search cases. Accordingly, the departmental officials were expected to be diligent, and the matter was required to be diligently pursued. The ITAT remand order

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> needed to be complied with within a reasonable period and, in any event, within the limitation period prescribed by the law. If this is not done, then the officials responsible for not doing this will have to be held accountable. Based on some vague statements about restructuring or major upheaval, no attempt can be made to avoid fixing responsibility.
>
> 8. Accordingly, we direct the Principal Commissioner of Income Tax, Pune, to investigate these matters and file affidavits explaining the status of the investigation. The affidavits must be filed and served by 6 February 2025.
>
> 9. The learned counsel for the Respondents agrees to communicate and authenticate the copy of this order to the Principal Commissioner of Income Tax, Pune.
>
> 10. List the petitions on 10 February 2025."

6. Pursuant to the above order, the Principal Commissioner of Income Tax-3 Pune has filed an affidavit, which admitted that there is no certainty about whether any order giving effect to ITAT's order has been made. No such order has been produced. It is conceded that the time limit for making such orders has now expired. In such a state of affairs, the revenue cannot avoid or delay the refunds due to the petitioner.

7. The affidavit of the Principal Commissioner makes for sorry reading. The Tribunal's order in this case was made on 31 July 2006, and it is claimed that it was received by the then-jurisdictional CIT-

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2, Pune, only on 13 March 2017. After that, it is claimed that the records are not traceable. The affidavit, while acknowledging the lapses, purports not to assign responsibility to any of the officials. This has become a routine. Lapses, which are otherwise evident are accepted because they are undeniable. But there is greatest reluctance to fix responsibility. The monetary burden due to the inaction or negligence is then passed on to the public exchequer.

8. Learned counsel for the Petitioners now submits that due to not passing the order giving effect within the prescribed period of limitation, the Petitioners would be entitled to the above refund returns. On instructions, he states that if the refunds are given by 30th April 2025, the Petitioners will not claim any interest on the refunds.

9. Accordingly, based on the statements in the affidavit filed by the Principal Commissioner of Income Tax, we direct the Respondents to pass appropriate orders on the issue of refunds by 15 April 2025. If any refunds are found due, they must be made to the Petitioners on or before 30 April 2025.

10. If there is a delay, the refund amounts will carry interest at 6% p.a. and must be paid to the petitioners. After such payment, the interest component must be recovered from the Officers responsible for the delay. There is no point in burdening the State Exchequer and, consequently, the taxpayer for inaction, whether deliberate or otherwise, on the part of the department officials.

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11. We dispose of the petitions in the above terms by directing the Respondents to file a compliance report by 5th May 2025 with an advance copy to the learned counsel for the Petitioners. This direction is issued given the fair statement made by the learned counsel for the Petitioners that the Petitioners would not claim interest provided the amounts are refunded by 30th April 2025. In the facts of this case, it will not be proper to require the Petitioners to once again approach this Court by filing a fresh petition.

12. The Rule is made absolute in the above terms with no cost order. All concerned to act on the authenticated copy of this order.

(Jitendra Shantilal Jain, J.) (M.S. Sonak, J.)

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