



\$~2

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision : 27.05.2025

+

W.P.(C) 6475/2025 & CM APPL No.29510/2025**PARAG KESHAV BOPARDIKAR**

.....Petitioner

Through: Mr Shashi Mathews, Mr Abhishek
Boob and Ms Sunidhi, Advocates.

versus

INCOME TAX OFFICER & ORS.

.....Respondents

Through: Mr. Debesh Panda, SSC Ms. Zehra
Khan, Mr. Vikramaditya Singh, JSCs
Ms Anauntta Shankar and Ms
Ravicha Sharma, Advocates.**CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE TEJAS KARIA****VIBHU BAKHRU, J. (ORAL)**

1. The petitioner has filed the present petition, *inter alia*, praying as under:-

“a. That this Hon’ble Court be pleased to Issue a Writ of certiorari, or a Writ in the nature of certiorari, or any other appropriate Writ, Order or directions, quashing the Impugned Orders; and / or

b. That this Hon’ble Court be pleased to Issue a Writ of mandamus, or a Writ in the nature of mandamus, or any other appropriate Writ, Order or directions to the Respondents to grant complete credit of TDS to the Petitioner, to the extent deducted and deposited by the Buyers into the Government treasury, by reading down the internal SOP No CPC(TDS)/ 26QB/ Credit Transfer, dated 12.07.2022, to that extent, and to grant consequential refund in terms of ITR filed by the



Petitioner; and / or.”

2. The petitioner is a Non-Resident Indian [**NRI**] and a tax resident of the United States of America [**USA**]. In the year 1998, the petitioner had purchased a residential property [**the subject property**] in Pune, Maharashtra. The petitioner was desirous of selling the subject property and certain prospective buyers had also shown interest to purchase the subject property. The petitioner states that Dr. Sharad Moreshwar Hardikar and Mrs Leela Sharad Hardikar [**the buyers**] had formally expressed their interest to purchase the subject property and on 18.03.2015 offered to pay earnest money for concluding the transaction. The petitioner accepted the said offer and conveyed his consent to sell the same to the buyers. He also informed the buyers that he intended to open a new bank account in India to ensure that the sale proceeds are repatriated to him. The buyers stated that the Tax Deducted at Source [**TDS**] on the sale of the subject property was required to be deducted at the rate of 20 percent as the petitioner was a non-resident. The buyers called upon the petitioner on 05.09.2015, to confirm his willingness for deduction of the TDS at the rate of 20 percent, which the petitioner affirmed. Thereafter, on 08.09.2015, the petitioner and the buyers executed the sale deed for the subject property at the agreed consideration of ₹2.00 Crores. Out of the aforesaid sum, the buyers credited a sum of ₹1,81,31,823/- to the petitioner's bank account and withheld the remaining amount of ₹18,68,177/-. There is no dispute that this amount was deposited by the buyers with the Government to the credit of the petitioner.

3. The petitioner computed the balance of income tax liability at ₹1,91,780/- and deposited the same as advance tax. Thereafter, on



27.10.2015, the petitioner repatriated the balance amount of sale proceeds to USA. The petitioner claimed that he was not aware at the material time that he was also required to file the Income Tax Return [ITR] for the relevant period and therefore, had failed to do so.

4. On 04.03.2023, the Assessing Officer [AO] issued a notice under Section 148A(b) of the Income Tax Act, 1961 [the Act] on the basis of the information available that the petitioner had sold the subject property, which according to the AO, suggested that the petitioner's income has escaped assessment. The petitioner responded to the said notice and furnished all details to establish that he had discharged his tax liability on the sale consideration received for the subject property and, therefore, no part of the income, which was chargeable to tax, had escaped assessment. However, the AO did not accept the same and proceeded to pass an order dated 15.04.2023 under Section 148A(d) holding that it is a fit case for issuance of notice under Section 148 of the Act. The said order was forwarded to the petitioner along with a notice dated 15.04.2023 issued under Section 148 of the Act.

5. The petitioner claims that the said communication was received by the petitioner on 18.04.2023. The petitioner stated that immediately on receipt of the said information, he once again contacted the buyers and pointed out to them that Form 26AS reflected the credit of ₹2,00,000/- as against the actual credit amount of ₹18,68,177/-. As per the petitioner the buyers should have deposited the requisite sum with the Government. The petitioner was informed by the buyers that in fact the amount of ₹18,68,177/- was deposited by them to the credit of the petitioner, however, the TDS return



been filed under Form 26QB, which relates to a resident-Indian instead of Form 27Q, which would be applicable in case of NRIs. The petitioner states that the buyers also proceeded to approach the Bank for correcting the TDS challan on 20.05.2023.

6. On 30.10.2024, the AO issued a notice under Section 142 of the Act seeking furnishing of certain documents. The petitioner responded to the same and sent various further communications. It is not necessary to examine the same, as the issue essentially relates to non-grant of credit of TDS deducted and deposited on account of using an unaccounted tax.

7. It is material to note that on 04.03.2025, the AO issued the proposed assessment order accepting the ITR filed by the petitioner. However, the AO also issued a computation sheet reflecting the demand of ₹46,81,013/- and also issued notice to the aforesaid effect. However, thereafter by the communication dated 04.03.2025, the initial assessment order was withdrawn and the computation sheet was confirmed without furnishing any reasoning. The AO also initiated penalty proceedings under Section 270A of the Act. The petitioner once again filed a detailed reply pointing out that the entire tax liability had been discharged, but the credit of the same was not effected on account of returns filed under Form 26QB instead of Form 27Q.

8. On the last date of hearing, that is, 21.05.2025, this Court passed the following order:-

“1. The petitioner, a Non-Resident Indian [NRI], has filed the present petition, *inter alia*, impugning the communications dated 04.03.2025 [**impugned communications**] issued by the Assessing Officer [AO] in respect of the Assessment Year [AY] 2016-



17.

2. A plain reading of the impugned communications indicates that they seek to withdraw an assessment order passed under Section 147 of the Income Tax Act, 1961 and to substitute the same by converting a clean assessment order into one that raises the demand and, in relation thereto, seeks to initiate penalty proceedings.

3. *Prima facie*, we find no provisions under the law that could have permitted the AO to *suo moto* withdraw an assessment order. Although a demand has been raised, it is *ex facie* erroneous, as it is on account of non-deposit of Tax Deducted at Source [TDS]. However, the TDS was deducted and deposited by the deductor. The only ground on which credit for the TDS has been denied to the petitioner is that the deductor has erroneously used an incorrect form which is applicable to a resident Indian instead of the one for an NRI. The AO has not only proceeded to raise a demand but has also thought it to be a fit case for issuance of penalty proceedings. This indicates a complete non-application of mind to the facts of the present case.

4. The learned counsel appearing for the Revenue seeks time to file a counter affidavit, clearly indicating the statutory provisions under which the impugned communications have been issued.

5. Let the counter affidavit be filed on or before the next date of hearing.

6. List on 27.05.2025.”

9. Pursuant to the aforesaid order, the AO has filed a counter affidavit, *inter alia*, affirming as under:-

“7. In the instant case, the buyer filed incorrect Form No.26QB instead of Form 27Q and did not provide any certificate in Form 16A to the Petitioner as a proof of payment of TDS.

8. On perusal of the details of challan on OLTAS of TRACES, it is found that the buyer has erroneously deposited the amount against his PAN -



AAPPH5855F, wherein Rs.16,68, 177/- (Rs.18,68,177/- - Rs.2,00,000/-) is still available to consume. The PAN of buyers AAPPH5855F is lying with Circle-11, Pune.

14. That it is respectfully submitted that the initial Assessment Order dated 04.03.2025 (at Annexure P/14) which was issued at 1.11 pm accepted the return of the Petitioner. However, along with the initial Assessment Order dated 04.03.2025 (Annexure P/14) which was issued at 1.11 pm, a demand raised by CPC, as reflected in the Computation Sheet dated 04.03.2025 due to mismatch in TDS deposit, and consequently, the Notice of Demand dated 04.03.2025 were issued to the Petitioner on 04.03.2025 at 1.11 pm (at pages 62-66 of Annexure P/1).

15. That later on the communication letter dated 04.03.2025 at 5.20 pm (at pages 60-61 of Annexure P/1) was issued erroneously and inadvertently by initiating penalty u/s 270A which is not applicable for this year. However again no modification in returned income as filed by the Petitioner was made by the AO.

16. However, since, the provisions of levy penalty in case the income assessed is greater than the maximum amount not chargeable to tax, where no return of income has been furnished [or where return has been furnished for the first time under section 148] u/s 270A is effective from 01.04.2017, and the instant case related to FY 2015-16 (AY 2016-17), the penalty proceedings u/s 270A is hereby dropped vide Order dated 12.03.2025 (Annexure P/16 at p.131) to the benefit of the Petitioner.

17. That, in view of the aforesaid facts and circumstances, this Hon'ble Court may be pleased to pass the necessary orders in the instant petition."

10. The learned counsel appearing for the Revenue submits that the Revenue has been unable to correct the error, as under the Standard Operating Procedure [SOP], the consent of the buyers is required, along with an indemnity bond and other documents.



11. On a pointed query, as to why the buyers' consent would be required, the learned counsel for the Revenue submits that the same would be necessary in order to obviate any action on the part of the buyers to recover the amount of the TDS that had been deposited. She states that although, there is no dispute as to the deposit of the TDS, but the petitioner's case has been withheld only on account of the documents required from the buyers.

12. In the peculiar facts of this case, we consider it apposite to direct the Revenue to correct the record and reflect the TDS deposited by the buyers to the petitioner's credit under the return filed in the Form 26QB with effect from the date, the amount was deposited. The Revenue shall further compute the amount of the refund, if any, that may be due to the petitioner in accordance with law. All the orders and communication not in conformity with the aforesaid directions shall be treated as having been set aside.

13. The petition is allowed in the aforesaid terms. The pending application is also disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 27, 2025

M

Click here to check corrigendum, if any