

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9937 OF 2022

Late Mr. Lakhpatrai Agarwal)
Through L/H Sunil L. Agarwal)
7D Maurya Apartment,)
Naylor Road, Pune – 411001.)
P.A.N. No.: AARPA6767F) .. Petitioner

Vs.

1. Assistant Commissioner of)
Income Tax, Circle 7)
PMT Building, Swargate,)
Pune – 400001.)
2. Deputy Commissioner of)
Income Tax, Central Circle 2(2))
Room No. 407, 4th Floor,)
PMT Building, Swargate.)
Pune – 411042)
3. Union of India)
through its Finance Secretary)
Department of Revenue,)
Ministry of Finance, 3rd Flr,)
Jeevan Deep Building)
Sansad Marg, New Delhi -100001) .. Respondents

Mr. Sham Walve a/w. Mr. Abhishek Khandelwal for the petitioner.
Mr. Ajeet Manwani a/w. Ms. Samiksha Kanani, for respondent.

CORAM : **DHIRAJ SINGH THAKUR &
KAMAL KHATA, J.**
RESERVED ON : **4TH JANUARY, 2023.**
PRONOUNCED ON : **10TH FEBRUARY 2023.**

JUDGEMENT: (PER KAMAL R. KHATA, J)

1. The present petition is filed by the legal heir of Late Mr. Lakhpatrai Agarwal who seeks to challenge the inaction on the part of the respondents, in complying with the direction and order dated 18th February, 2010 passed by the Income Tax Appellate Tribunal ('ITAT') by not completing assessment in time as per the provisions of the Income Tax Act, 1961 (for short '**the Act**') and consequently not issuing the refund and the jewellery seized in the course to the petitioner.

Brief facts: -

2. On 13th August 2002 a survey under Section 133A and search under Section 132(1) of the Act was conducted at the residential premises of Late Mr. Lakhpatrai Agarwal.

3. During search, jewellery pertaining to the petitioner was seized and the petitioner's father gave a statement under Section 132(4) of the Act admitting to undisclosed income to the tune of Rs. 28,04,308/-.

4. Thereafter, a notice under Section 158BC of the Act was issued and served upon the assessee calling upon him to file his income tax return. Upon receipt of the notice, the petitioner's father filed his return of income for the block period 1st April, 1996 to 13th August, 2002 declaring undisclosed income amount of Rs.28,04,308/- in form of Fixed Deposit Receipts ("FDRs") (Rs. 20,00,000/- being the principal amount and Rs. 8,04,308/- being the interest portion).

5. The respondents undertook correspondence with the bank manager to ascertain full particulars of the FDRs involving the petitioner's father and the Bank Manager, furnished the requisite data. After consolidating the data, the undisclosed income by the Petitioner's father was not adequate to meet the discrepancy in the FDRs. On 29th December, 2004, the block assessment order under Section 158BC(c) of the Act was passed assessing Rs. 52,82,278/- as against the declared return of income of Rs. 28,04,308/-.

6. Being aggrieved by the block assessment order and the addition made thereto, the petitioner preferred an appeal before Ld. Commissioner of Income Tax (Appeals) (for short '**CIT(A)**') who passed an order confirming the additions made by the AO in the block assessment order.

7. Being aggrieved by the order passed by the CIT(A), the petitioner preferred an appeal before the Income Tax Appellate Tribunal (**ITAT**). The ITAT, partly allowed the appeal citing violations of principles of natural justice on the ground that the petitioner ought to have been allowed to cross examine the statement made by the bank manager or rebut the claims made by him with evidence. A miscellaneous application was filed by the petitioner before the ITAT to bring on record certain facts that purportedly were recorded incorrectly inadvertently in the order dated 18th February 2010 that came to be dismissed in July 2011.

8. On 6th March 2018, the petitioner addressed a letter to the respondent, to bring on record the fact that since the AO had not acted upon the order dated 18th February 2010 passed by the ITAT by which the matter was remanded back, as per Section 153(3) of the Act the time limit for completion of such assessment proceedings viz. nine months

had elapsed and consequently the respondent was called upon to refund Rs.7,39,083/- the tax paid with applicable interest totaling to Rs.14,33,821/-.

9. Since there was no revert, the petitioner addressed two other letters dated 2nd May 2018 and 17th August 2018 and once again called upon the respondents to refund the amounts with applicable interest as claimed in the letter dated 6th March 2018.

10. In the meantime, on 24th May 2018, the petitioner addressed a letter to the CIT and sought migration of PAN from the second respondent to the first respondent.

11. On 23rd October 2018, the petitioner addressed a letter to the second respondent requesting him to look into the matter of granting refund due to the petitioner. Since there was no revert, the petitioner filed a grievance on the PG portal. By an email dated 20th October 2021, the IT department sought time to enable them to address the grievance and refer it to the jurisdictional AO. In reply by email, on the same day, the petitioner gave the PAN to the IT department. Since there was no resolution, the petitioner once again addressed a letter dated 8th January

2022 and also sent an e-mail dated 10th January 2022 to the principal CCIT, Revenue Secretary and the Chairman of Central Board of Direct Taxes (**CBDT**) and informed them that the grievance petition made on the CPGRAM portal was disposed of without issuance of refund. The petitioner then filed an appeal on the CPGRAM portal which is still pending.

12. The learned counsel for the petitioner submitted that the petitioner has not received any response to the two follow up emails dated 14th February 2022 and 18th April 2022 to the 10th January 2022 email addressed to the Principal CCIT, Revenue Secretary and the Chairman of CBDT.

13. The learned counsel submitted that on 13th July 2022, the petitioner received an intimation letter along with notice under Section 143(2) r/w. Section 158BC(c) r/w. Section 254 of the Act from the Assistant Commissioner of Income Tax Circle (7), Pune, stating that the ITAT has set aside the order and remanded the matter to the AO. Further notice u/s 143(2) was issued on 1st May 2022 fixing a date of hearing on 8th August 2022. In view of the aforesaid it was submitted that the

petitioner filed the present petition for seeking refund of the tax paid and return of the jewellery seized.

14. The learned counsel for the petitioner submitted that Section 153(3) provides that any order of fresh assessment in pursuance of an order under Section 254, 263 or 264 should be made within a period of 9 months from the end of the financial year in which the order is received consequently, the AO now seeking to give effect to the said order of the ITAT dated 18th February 2010 is time barred.

15. The petitioner relied upon the judgment of the Delhi High Court in the case of **Commissioner of Income Tax v/s. Bhan Textile (P) Ltd.**¹ in support of his contention that the AO seeking to give effect to the order dated 18th February 2010 is barred by limitation. He further relied upon the decision of the Kerala High Court at Ernakulam in the case of **Dr. R. P. Patel v/s. Assistant Commissioner of Income Tax, Circle - 1**² which held that even if one issue has been remanded back to file for AO's consideration, the limitation entailed under the provisions of Act would apply.

¹[2008] 300 ITR 176 (Delhi)

² [2014] 51 Taxmann.com pg. 81 (cochin)

16. He submitted the petitioner ought to have been given an opportunity to cross examine the bank manager as directed by the ITAT vide their order dated 18th February 2010. Further, by not giving a chance for cross examining the bank manager and completing the assessment within the stipulated time provided under Section 153(3) for which the matter remanded back to the AO, led to the action of the AO being contrary to the provisions of the Act and violated of principles of natural justice.

17. He submitted that in view of the inaction on the part of the AO for a considerable period of time beyond stipulated period and not granting refund to the petitioner is *ex-facie* contrary to Articles 265A and 300 of the Constitution of India. Consequently, the prayers in the petition deserve to be granted as prayed.

18. The learned counsel for the Respondent relied upon the wordings of section 153(3) which reads as under:

“ Notwithstanding anything contained in sub-section (1) and (2), an order of fresh assessment in pursuance of an order under section 254 or section 263 or section 264, setting aside or cancelling an assessment, may be made at any time before the expiry of nine months from the end of the financial year in which the order under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principle Commissioner or Commissioner or, as the case may be, the

order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner.

[Provided that where the order under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words “nine months”, the words “twelve months” had been substituted]

He submitted that the section envisages ‘*receipt of the order*’ by the Principal Chief Commissioner or such other person as mentioned in the section for limitation to commence.

19. The Learned Counsel for the Respondent relied upon paragraph 3 of the letter dated 30th May 2022 annexed at page 138 of their reply dated 28th September 2022 to contend that the ITO has not ‘*received*’ the order dated 18th February 2010 therefore the time period prescribed by Section 153(3) of the IT Act will not commence and consequently their action was within the time prescribed and was required to be completed on or before 30th September 2023.

20. The Learned Counsel further contended that receipt of the letter dated 6th March 2018 would not entitle the Petitioner to contend commencement of the limitation period.

21. The learned counsel relied upon paragraphs 4.3 to 4.8 of the reply to show the steps taken by the respondents pursuant to the ITAT order dated 18th February 2010.

22. He submitted that the proceedings u/s 143 (3) r.w.s. 158BC r.w.s 254 were pending and the order would be finalised after giving ample opportunity to the Petitioner and will also clarify whether there will be refund or demand in the said case; and refund if any would be made in due course. He submitted that the Petition accordingly deserved to be dismissed.

Conclusion:

23. We have heard the counsels at length and have also perused the proceedings.

24. It is not in dispute that the DCIT Central Circle 2(2) Pune received the letter from the Petitioner as more particularly stated in paragraph 4.4 of the reply and that a letter was sent on 9th February 2022 to the ITAT requesting for a copy of the ITAT order dated 18th February 2010.

25. Upon inquiry with the respondent's counsel by this Court, he fairly admitted that the letter mentioned in paragraph 4.4 of the reply was referring to the letter dated 6th March 2018 though not mentioned therein. Besides this the learned counsel for the Petitioner also drew our attention to letter dated 19th July 2022 addressed by ITAT Pune to the Petitioner annexed as Exhibit N to the Petition at pages 96 being the covering letter and Serial no 921 at pages 97 & Serial No. 925 at page 98 to contend that the order dated 18th February 2010 was received by the respondent and sent to the CIT Central Pune-37.

26. We are unable to agree with the respondent's Counsel's contention that they have not received the order dated 18th February 2010. The Section 254 (3) itself provides for ITAT to send a copy of the order to both the assessee and to the Commissioner; therefore, the onus would lie on the respondent to prove that they had not received the said order. If we had to accept the contention of the Respondent it would have led to extending the time for compliance with the order dated 18th February 2010 for almost 12 years at least in this case. Further, it would lead to shifting the onus on the assessee to oversee that the Principal Commissioner or Commissioner, as the case may be, receives the copy of the order. We don't agree as it does not appear to be the intention of the legislature. We are unable to accede to the contention of the respondent

to construe the words "is received" in section 153(3) to mean "till its received" and thereby extend the limitation in perpetuity. It has to be a reasonable period of time especially when the respondents are a party to the proceeding.

27. Be that as it may, the respondents who were party to the proceedings could have requested for a copy of the order from the ITAT at least a month after the order was passed on 18th February 2010. One would have at least expected that after receiving the letter from the Petitioner on 6th March 2018 the respondent could have requested for a copy from the ITAT, as they eventually did on 9th February 2022 or could have requested the assessee to forward a copy of the said order pursuant to the receipt of the letter dated 6th March 2018.

28. Having failed to take steps to comply with the order dated 18th February 2010 and even within 9 months after receipt of the letter addressed by the Petitioner on 6th March 2018, we direct the respondents to issue a refund of ₹ 7,39,083/- plus additional interest (under section 244A of the Act) till date of payment to the Petitioner and to release the jewellery seized within two weeks from the date of this order.

29. Petition disposed of with no order as to costs.

30. Parties to act on the authenticated copy of this order.

(KAMAL KHATA, J.)

(DHIRAJ SINGH THAKUR, J.)



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