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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.2616 OF 2017

Masuma I. Rupani … Petitioner
Vs.
The Union of India and Ors. … Respondents

Mr. Dormaan J. Dalal for the Petitioner.

CORAM : A.S. OKA &
A.K. MENON, JJ.

DATE : 11th OCTOBER, 2017

P.C.

1 Heard the learned counsel appearing for the petitioner.

2 With a view to appreciate the submissions made across the bar, a reference to few factual details may be necessary. On the basis of the Voluntary Disclosure Scheme introduced by the Government of India, the petitioner applied for benefit under the scheme. The petitioner issued a cheque in the sum of Rs.2,66,715/- in favour of the Reserve Bank of India, Account Income Tax. The case made out in the letter dated 12th April, 1998 issued by the Union Bank of India is that due to error on the part of the Bank that the cheque was dishonoured.

3 In December, 2000, a notice under Section 148 of the Income Tax Act, 1962 ("Income Tax Act'") was issued. The notice was for the Assessment Years 1996-97 and 1997-98. On 28th April, 2001 the assessment orders were passed calling upon the petitioner to pay tax and penalty. There was a separate order passed under clause (c) of Sub-Section (1) of Section 271 of the Income Tax Act of imposing 100% penalty for the aforesaid two financial years. Appeals were preferred by the petitioner against the aforesaid orders which were dismissed on 1st October, 2003. In an Appeal preferred by the petitioner before the Income Tax Appellate Tribunal, orders of remand were issued. After order of remand, fresh order was made on 13th August, 2007 by the Commissioner of Income Tax under Section 143(3) and 271(1)(c) of the Income Tax Act. Being aggrieved by the order dated 13th August, 2007 an Appeal was preferred by the petitioner. By order dated 30th October, 2014 the Appeal came to be dismissed.

4 The first submission of the learned counsel appearing for the petitioner is that the impugned order shows non-application of mind as the same has been passed in a mechanical manner by merely quoting earlier orders. His second submission is that penalty should have been taxed on protective basis. He submitted that the petitioner had opted to apply for Voluntary Disclosure Scheme by paying

necessary amount by a cheque, but the cheque was dishonoured due to mistake on the part of bankers. Relying upon Section 71 of the Finance Act, he submitted that the declaration made by the petitioner under the said scheme cannot be used in any proceedings for imposing penalty on the petitioner.

5 We have given careful consideration to the submissions. Firstly, we may note that orders of the Appellate Authority dated 30th October, 2014 have been challenged by filing the present Petition on 19th September, 2017. The only excuse given in the petition is of poverty of the petitioner without placing any material on record.

6 In our view, the Petition deserves to be rejected only on the ground of gross and unexplained delay. However, a brief reference to the merits of the controversy is necessary. It appears that the petitioner made an application under Section 154 of the Income Tax Act which was rejected by the Assessing Officer by order dated 31st January, 2014. Appeals were filed against the said order by the petitioner. We must note here that admittedly the cheque issued by the petitioner which was a condition precedent for availing the benefits of the Voluntary Disclosure Scheme was dishonoured. Perhaps this led to service of notice under Section 148 of the Income Tax Act. It appears that the petitioner filed returns under protest. Subsequently, after assessing the

amounts, a notice was issued under Section 158 BFA read with Section 158 BFA(2) of the Income Tax Act. The Assessment order under Section 143(3) was passed on 1st December, 2000 under which penalty proceedings under clause (c) of Sub-Section (1) of Section 271 were initiated apart from imposing penalty and interest. The application made by the petitioner for rectification under Section 154 of the Income Tax Act was rejected on the ground that applications were filed belatedly after gap of 13 years. This observation was made on the ground that though the relevant assessment order was made on 1st December, 2000 the rectification application was made on 21st January, 2014. That is the reason why there is an observation by the CIT Appeal that the order passed on 1st December, 2000 had attained finality. The Appellate Authority observed that the application filed after 13 years of passing of the assessment order which has been accepted by him after CITs order dated 13th August, 2007, the petitioner may not have any locus standi.

7 Thus, apart from delay, we find that there is absolutely no merit in any of the contentions raised in the Petition. We find that there is no merit in the Writ Petition and the same is dismissed.

(A.K. MENON, J) **(A.S. OKA, J)**