R.M. AMBERKAR
(Private Secretary)

# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
**CIVIL APPELLATE JURISDICTION**

## WRIT PETITION NO. 235 OF 2018

Subhadra Manubhai Shah .. Petitioner

Versus

State of Maharashtra & Ors. .. Respondents

..................

- Mr. A.M. Anandhan a/w Mr. Anish K.V. i/by Triyama Legal for the Petitioner
- Ms. S.D. Vyas, 'B' Panel Counsel for Respondent No. 1 - State
- Ms. Mohinee Chougule i/by Mr. Suresh Kumar for Respondent Nos. 2 to 5

..................

**CORAM : AKIL KURESHI &**
**S.J. KATHAWALLA, JJ.**

**DATE : JUNE 20, 2019.**

**P.C.:**

**1.** The petitioner has complained of non releasing of the refund of sum of Rs. 25,774/- by the Income Tax Department.

**2.** Brief facts are as under:-

2.1 The Petitioner is a partner of erstwhile partnership firm namely M/s. Shreya Construction Company. For the assessment year 1982-83, the Assessing Officer passed order of assessment making certain additions in the hands of the firm giving rise to tax demand of Rs. 23,278/-. The firm's appeal came to be dismissed by the Commissioner (Appeals) upon which the petitioner approached the Income Tax Appellate Tribunal. The Tribunal allowed the appeal by a judgment dated 8.1.2004. Out of such judgment of the Tribunal, the refund claim of the partnership firm arose. In the meantime, since the partnership firm was dissolved , the petitioner had conveyed to the Department that she is authorized to receive the refund. This was duly supported by other partners and indemnity bond.

**3.** For the long time, Department did not release the refund. We notice that in the affidavit in reply, Department has taken following stand:-

> "4.3 With reference to Ground No. (iii) of the Writ Petition, it is submitted that it is seen from the Deed of Declaration cum Indemnity and other documents (as the case records are not available) that refund is pending in the case of the assessee. The department is now in the process of issuance of refund which was due in the case of M/s. Shreyas Construction Company for the A.Y. 1982-83 and which is now to be issued to Mrs. Shubhadra Manubhai Shah, who was authorized by the existing partners to receive the refund on behalf of the said firm."

**4.** From the said statement on oath, it emerges that the Department was unable to process the refund previously on account of non availability of the records. However, presently, the necessary documents are available and the Department has also shown willingness to release the refund.

**5.** Acting on such stand of the department, it is directed that the refund for the said sum of Rs. 25,774/- shall be released in favour of the petitioner within four weeks from today with statutory interest.

**6.** The petition is disposed of.

**[ S.J. KATHAWALLA, J. ]** **[ AKIL KURESHI, J ]**