IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.170 OF 2019

Sham Anand Salunkhe ... Petitioner
vs
1. The Principal Commissioner of Income Tax-2
2. The Assistant Commissioner of Income Tax-4
3. Union of India ... Respondents

Mr.Mandar Vaidya for Petitioner
Mr.Suresh Kumar for Respondent nos.1 & 2.

CORAM : AKIL KURESHI &
M.S.SANKLECHA, JJ
DATE : 1st MARCH, 2019

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1. The petitioner has challenged the order dated 15.5.2018 passed by the Commissioner of Income Tax rejecting the petitioner's revision application on the ground of delay.

Brief facts are as under :

2. The petitioner is an individual. He was member of a partnership firm from which, he retired on 23.5.2005. The petitioner filed his return of income for Assessment Year 2007-2008 in which he had

included a sum of Rs.51.96 lacs (rounded off) which was received by him on retirement from the said partnership firm towards his share in goodwill. Such return was accepted by the Assessing Officer under section 143 (1) of the Income Tax Act, 1961 (for short, 'the Act') without scrutiny on 24.3.2009.

3. The petitioner filed a revision application before the Commissioner of Income Tax on 6.9.2017 against the said order of assessment, and requested that the amount of Rs.51.96 lacs be deleted from computation of his taxable income for Assessment Year 2007-08. In such revision petition, the petitioner had stated that intimation under section 143 (1) of the Act, was not served on him and that therefore, there was no delay on his part in filing the revision application. However, if the Commissioner of Income Tax was of the opinion that the revision application was beyond the period of limitation, the same may be condoned. The petitioner's assertions in the revision application in this respect may be noted.

> *"11. It is further brought to the kind notice of your honour that the applicant/assessee applied on 01-06-2017 for issuance of the certified copy of the intimation for the Assessment Year 2007-08. It may kindly be appreciated that the applicant/assessee was not served with the intimation/demand under sec.143 (1) of the Income Tax Act and realised for the first time on 12th and 13th May 2017, on receipt of notice under*

sec.245 of Income Tax Act, regarding incorrect acceptance of the income-tax return filed by him for the Assessment Year 2007-08. It is submitted that, therefore, limitation for filing present application/representation runs from the date of his awareness of the intimation i.e. from 12th May 2017, and therefore present application/representation is within limitation."

4. The Commissioner of Income tax dismissed the revision petition by the impugned order, on the ground that the same was filed much beyond the period of limitation prescribed. The concluding observations reads thus :

"4. Your petition u/s 264 is carefully considered. As per the provision of Sec.264 the application for revision must be made within one year from the date on which the order in question was communicated to the assessee, or the date on which he otherwise came to know of it, whichever is earlier. As per our records, in your case intimation u/s 143 (1) was served on 29/03/2009, a copy of which is enclosed to this letter. Therefore, as Revision Petition is not filed in time, the same is not maintainable under provisions of Sec.264. Therefore, the Revision Petition is disposed of as dismissed."

5. Learned counsel for the petitioner submitted that intimation under section 143 (1) of the Act, was never served on the petitioner and that therefore, the Commissioner of Income Tax was not correct in holding, that the revision application was filed beyond the period of limitation. He submitted that the petitioner had offered the said income to tax erroneously and the Commissioner of Income Tax therefore, in exercise of his revisional jurisdiction, should have granted the reliefs as

prayed for in the revision application.

6. On the other hand, Mr.Suresh Kumar learned counsel for the revenue, opposed the application contending that intimation under section 143 (1) was duly served on the petitioner and in any case, the petitioner could not have waited for several years for filing the revision application.

6.1. In the present case, we are prepared to proceed on the basis that intimation under section 143 (1) of the Act, was not served on the petitioner. We also recognize the right of the petitioner, to persuade the Commissioner of Income Tax, to delete the income declared in the return, if it would otherwise, not taxable.

7. The question in the present petition, is one of limitation in filing the revision petition before the Commissioner of Income Tax. Sub-section (3) of section 264 of the Act, envisages the period of limitation of one year for filing a revision application from the date on which, the order under revision is communicated to the applicant or which he otherwise came to know of it, or whichever is earlier. This period of limitation thus, commences not from the date of the order but, from the date of its communication or knowledge whichever is earlier.

8. In the present case, it is not disputed that once the petitioner filed the return of income, the scrutiny assessment thereof, would become time-barred upon expiry of the period prescribed under the statute. This would happen sometime in the year 2010.

9. In the circumstances, the knowledge that the department does not propose to take the return of income for scrutiny assessment, can be attributed to the petitioner. If the petitioner had any dispute with the department accepting his return as per declaration made in it, the petitioner had to file an appropriate revision application before the Commissioner of Income Tax, within a period of one year thereafter, and at any rate, explaining the delay caused in filing such a revision application beyond the said period. In the present case, the revision application was filed seven years later. By no stretch of imagination, such long period can be ignored. The petitioner simply, cannot take shelter of non-communication of the intimation or acceptance under section 143 (1) of the Act. If, the petitioner wanted to dispute his own declaration in the return, he had to take appropriate steps before the Commissioner of Income Tax within the period of limitation prescribed which in the present case, is not done.

10. In the result, petition is dismissed.

(M.S.SANKLECHA, J) **(AKIL KURESHI, J)**