R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO. 2504 OF 2018

Sudhir Chimanlal Mehta .. Petitioner

Versus

The Union of India & Anr. .. Respondents

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- Mr. Sunny Shah a/w Mr. Sandeep Hirvadekar i/by A. Bharat & Co for the Petitioner
- Mr. Akhileshwar Sharma for the Respondents

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CORAM : AKIL KURESHI &
M.S. SANKLECHA, JJ.

DATE : JANUARY 31, 2019.

P.C.:

1. Petitioner has challenged the order dated 27.9.2017 passed by respondent No. 2 - Assistant Commissioner of Income Tax under Section 188A of the Income Tax Act, 1961 ("the Act" for short).

2. Brief facts are as under:-

(a) The petitioner was a partner of one M/s. Suraj Jewellers, a partnership firm. The partnership firm would file income tax return in such capacity. The dues of the partnership firm arising out of the assessment for the assessment year 2006-

07 remained unpaid. Department, therefore, instituted proceedings for recovery against the petitioner in terms of Section 188A of the Act. A show cause notice was issued on 13.6.2016 calling upon the petitioner why the order under Section 226(3)(x) of the Act should not be passed. In such notice, the Authority relied on Section 188A of the Act as well as Section 25 of the Indian Partnership Act, 1932. The petitioner replied the show cause notice under communication dated 10.1.2017 and principally contended that he cannot be treated as an 'Assessee in Default' because he had retired from partnership firm with effect from 10.12.1999 that is long before the assessment order in relation to which the dues are sought to be recovered.

(b) It is not in dispute that the petitioner had also produced before the said Authority a copy of communication dated 10.12.1999 on a stamp paper by the petitioner to the other partner of the firm conveying his intention to retire from the partnership firm. As the partnership constituted of two partners, according to the petitioner, upon his retirement, the partnership would stand dissolved. The petitioner would point out that below this communication, the other partner of the firm Mr. Nitin S. Thalesar had put his endorsement "I confirm".

(c). Ignoring said pleas of the petitioner, respondent No. 2 passed the impugned order in which his main contention was that the partner cannot be retired by sending a mere communication, instead, there had to be a resolution to be passed by the partnership. In the present case, therefore, he refused to recognize the petitioner's retirement from the partnership and consequent dissolution of the firm. He thereafter invoked Section 188A of the Act and held that the dues of the partnership may be recovered from the petitioner as its partner.

3. Having heard the learned counsel for the parties and having perused the documents on record, we find that respondent No. 2 has incorrectly discarded the stand of the petitioner of having retired from the partnership. No provision under the Partnership Act 1932 has been brought to our notice which would require a resolution to be passed by the firm before a partner, that too, in a partnership at will, can retire. However, this conclusion would not solve the entire issue. Several other considerations would have to be weighed before the question of recovery of dues of the firm can be made against the petitioner.

4. Firstly, the Authority has not examined the genuineness or correctness of the communication dated 10.12.1999 under which the petitioner claimed to have retired as a partner of the firm. Secondly, the question of outgoing partner being liable for the dues of the third party even after retirement unless public notice or knowledge of such retirement can be imputed on said third party may also have to be gone into. For such reasons, we would prefer that respondent No. 2 decides the entire issue afresh after giving fresh opportunity to the petitioner of hearing if he so desires. Accordingly, the impugned order dated 27.9.2017 is set aside. The issue placed back before Respondent No. 2 for passing fresh order in accordance with law. We have expressed no opinion. All contentions of the petitioner are kept open.

[M.S. SANKLECHA, J.] **[AKIL KURESHI, J]**