IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 08.08.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.28432 of 2018
&
W.P.No.4754 of 2019

Lakshmi Muthukrishnan ... Petitioner
in W.P.No.28432 of 2018

Vasanthi Muthukrishnan .. Petitioner
in W.P.No.4754 of 2019

Vs.

The Principal Commissioner of Income Tax-5
Room No.701, VII Floor, New Block
No.121, Uthamar Gandhi Road
Chennai - 600 034 .. Respondent
in W.P.No.28432 of 2018

The Principal Commissioner of Income Tax-5
528, 5th Floor, Wanaparthy Block
No.121, M.G.Road
Chennai - 600 034 .. Respondent
in W.P.No.4754 of 2019

Prayer in W.P.No.28432 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records on the files of the Respondent herein in culminating in the impugned order C.No.205/Pr.CIT-1/2017-18 dated 10.08.2018 passed by the Respondent rejecting the refund of Rs.10,02,751/- (Rupees Ten Lakhs Two Thousand Seven Hundred and Fifty one only) and quash the same and direct the Respondent to make the payment of Refund of Rs.10,02,751/- (Rupees Ten Lakhs Two Thousand Seven Hundred and Fifty one only) to the petitioner.

Prayer in W.P.No.4754 of 2019: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records on the files of the Respondent herein in culminating in the impugned order No.PCIT-5/ITO (HQ)/VB/10(2)(b)/2/2018-19 dated 26.12.2018 passed by the Respondent as the extent of rejecting the refund of

Rs.7,24,381/- (Rupees Seven Lakhs Twenty Four Thousand Three Hundred and Eighty one only) for the Assessment years 2003-04 to 2010-11 and quash the same and direct the respondent to make the payment of refund of Rs.7,24,381/- (Rupees Seven Lakhs Twenty Four Thousand Three Hundred and Eighty one only) along with interest to the petitioner.

For Petitioner : Ms.Gayathri
in both W.Ps

For Respondents : Mr.D.Prabhu Mukunth Arun Kumar
in both W.Ps

COMMON ORDER

Ms.Gayathri, learned counsel on record for writ petitioner in both these writ petitions and Mr.Prabu Mukunth Arunkumar on behalf of sole respondent in both these writ petitions are before this Court.

2.With consent of learned counsel on both sides, main writ petitions are taken up, heard out and are being disposed of.

3. Subject matter of instant writ petitions arise under 'Wealth Tax Act, 1957 (27 of 1957)', hereinafter 'said Act' for brevity, clarity and convenience.

4.Suffice to say that certain proceedings under said Act were sought to be revised by the writ petitioners by resorting to Section 25 of said Act which vests revisional powers in Commissioner.

5.Assessment years which these two writ petitions pertain to are Assessment years 2003-2004 to 2012-13 (10 Assessment years), which shall hereinafter be referred to as 'said AYs' for brevity.

6.Circumstances under which writ petitioners resorted to revision under Section 25 of said Act, briefly stated are that writ petitioners had wrongly included commercial establishments and residential house properties in their Wealth Tax returns qua said AYs though the said properties were let out for a minimum period of 300 days during the relevant previous AYs, that this error was committed as the writ petitioners were unaware of the exemption under Section 2(ea)(i)(4) of said Act. It is the case of the writ petitioners that they gained knowledge about this error only in the year 2015 and this aspect of the matter i.e., gaining knowledge is not disputed.

7. To be noted, writ petitioners have paid Wealth Tax on the aforesaid erroneous returns and therefore, this is clearly a case of over reporting of wealth. To put it differently, it is not a case of under reporting of wealth or non-filing of returns of wealth.

8.Having set out the circumstances under which writ petitioners resorted to revision under Section 25 of said Act briefly, it is to be noted that there was delay in the writ petitioners approaching the sole respondent, who is the Revisional Authority.

9. Vide 'order dated 10.08.2018 bearing reference C.No.205/Pr.CIT-1/2017-18' (hereinafter 'Impugned order I' for brevity), respondent rejected the writ petitioner's request for condonation of delay with regard to all AYs i.e., said AYs or in other words for the 10 AYs 2003-04 to 2012-13. Vide 'order dated 26.12.2018 bearing reference No.PCIT-5/ITO (HQ)/VB/10(2)(b)/ 2/2018-19 ' ('Impugned order II' for brevity), respondent rejected the assessee's request for condonation of delay with regard to AYs 2003-04 to 2010-2011, but allowed the assessee's request for condonation of delay with regard to AYs 2011-12 and 2012-13. 'Impugned order I and Impugned order II' shall collectively be referred to as 'impugned orders' in plural and 'impugned order' in singular wherever it is appropriate. Assailing the impugned orders instant writ petitions have been filed.

10. To be noted, Impugned order I has been assailed in W.P.No.28432 of 2018 and Impugned order II has been assailed in W.P.No.4754 of 2019.

11. Caption to impugned order I says that it has been passed under Section 119(2)(b) of Income Tax Act, 1961 and Caption to impugned order II says that it has been passed under Section 10(2)(b) of said Act. In the hearing, it is submitted that impugned orders have been made under Section 25(1)(c)(ii) of said Act.

12. There is no disputation or disagreement that the respondent has powers to make the impugned orders albeit under a different provision of law i.e., provision of law other than those mentioned in the captions of the impugned orders. Therefore, this Court proceeds to deal with the impugned orders by construing the impugned orders to have been made by the lone respondent in both writ petitions under Section 25(1)(c)(ii) of said Act.

13. Notwithstanding several averments made, contentions raised and grounds urged in the affidavits filed in support of the writ petitions and the counter filed by the lone respondent, the entire matter was projected and argued by both sides on one point and that is with regard to whether the respondent was justified in refusing to condone delay for said AYs vide impugned order I and refusing to condone delay for some of said AYs vide impugned order II. A perusal of the provision under which impugned orders have been made, viz., Section 25(1)(c)(ii) of said Act makes it clear that the respondent does have powers to condone delay and most importantly, there is no cap qua time period with regard to condonation of delay. It is also not in disputation that the provisions of Section 25(1) of said Act is akin to Section 264 of IT Act. To be noted, Section 264 of IT Act deals with revisional powers of Principal Commissioner and Commissioner of Income Tax.

14. Be that as it may, a perusal of impugned orders, more particularly, impugned order II makes it clear that writ petitioners have only erroneously overstated the returns and it is not a case of under statement of wealth or non-filing of returns. This is articulated in Paragraph 4 of impugned order II, which reads as follows:

> '4.Decision-I have carefully considered the assessee's petition, the AR's oral and written submissions, the WTO's report and the Range Head's forwarding remarks. The assessee has quite clearly and mistakenly included as assets in her wealth tax returns the commercial establishments and the residential house property which had been let out for a minimum period of 300 days during the relevant previous year. Such assets are exempt in terms of provisions of section 2 (ea)(1) of the Act. The reason proffered is the lack of familiarity with the legal provisions. The overall claim of refund of Rs.11,13,973/- spans ten assessment years for AYs 2003-04 to 2012-13. At the outset, I am absolutely in agreement with the contention of the WTO that no condonation can be entertained beyond a period of six years from the end of the assessment year for which the petition for condonation has been made. As the petition has been made by the assessee on 25th January 2018, the only claims which can be considered in her case relate to AYs 2011-12 and 2012-13, the claims of refund for which are seen to be Rs.1,63,927/- and Rs.2,67,619/- totalling Rs.3,89,592/-. Before proceeding further, it needs to be understood that we have an assessee here who has filed her returns of wealth and over-reported her wealth due to her lack of familiarity with the provisions of the law. It is

important to note that this is not a case of either under reporting of wealth or of non-filing of returns of wealth. On this background, it is clear that the assessee's claim of Rs.3,89,592/- is substantial for it to cause genuine hardship to her. I may add that though her claim for the other eight assessment years cannot be granted, that claim of Rs.7,24,381/- has also really got to be considered for the genuine hardship that could be caused to her. Accordingly, after taking into account the totality of circumstances, I am of the considered view that a case for genuine hardship has been made out in the assessee's case. Accordingly, I am inclined to accept her request for condonation of delay for AYs 2011-12 and 2012-13.'

(underlining made by this Court to highlight and supply emphasis)

15. The underlined portion in impugned order II will also reveal that respondent has even taken the view that the properties included in the returns are clearly exempt. Therefore, writ petitioners are hit only by delay.

16. This takes us to the reason for the respondent not condoning the delay wholly in impugned order I and partly in impugned order II. The reason is Board Circular No.9/2015 bearing reference F.No.312/22/15-OT dated 09.06.2015 made by Central Board of Direct Taxes. Vide this Board circular it is instructed that delay beyond six years from the relevant Assessment Year cannot be condoned. No doubt the Board Circulars bind the respondent. Equally, there is no disputation before this Court that, it does not in any manner place fetters or come in the way of condoning the delay if this Court considers this as a fit case for condonation of delay.

17. In this backdrop, as already alluded to supra, even according to the impugned orders this is a case of over statement of wealth and it is not a case of understatement or non-filing of returns. More importantly, writ petitioners have also paid the tax on wealth that has been overstated in the returns. As already been alluded to supra that respondent has even recorded in the impugned orders that the properties which have been erroneously included in the returns by the writ petitioners are clearly exempt under Section 2(ea)(i)(4) of said Act.

18. It is not completely forbidden to have a cursory look and have a birds eye view qua merits of the matter while testing whether delay in a given case deserves to be condoned. As this cannot be the sole determinant, this Court has considered the same as one of the buttressing features in search of an answer

to the question as to whether delay is condonable / can be condoned in the instant cases.

19. As already mentioned supra, Section 25 of said Act is akin to Section 261 of IT Act. This Court has already passed an order dated 28.06.2019 in W.P.No.7630 of 2019 with regard to condonation of delay in a matter pertaining to Section 264 of IT Act. This Court is informed that as of now there is no intra-court appeal against the said order and therefore, the said order is operating.

20. The circumstances and facts are also more or less similar. The principle nonetheless applies.

21. Relevant portions of the aforesaid order dated 28.06.2019 in W.P.No.7630 of 2019 being Ramupillai Kuppuraj Vs. The Income Tax Officer and others, are contained in Paragraphs 19 to 30 and the same read as follows:

> '19 This takes the discussion in this order to the next case law, namely, Vinay Extraction Pvt. Limited case, which is a judgment rendered by a Hon'ble Division Bench of High Court of Gujarat at Ahmedabad. This is also a case arising out of a petition under section 264 of IT Act. In this case, the order of Commissioner was assailed in a writ petition which was heard by a Division Bench of Gujarat High Court. A careful perusal of the factual matrix ov Vinay Extraction Pvt. Limited case reveals that it is a case where the assessee relied on the principle that Government subsidy is an incentive not for the specific purpose of meeting a portion of the cost of the assets, though quantified as a percentage of such cost and that the subsidy does not partake the character of a payment intended either directly or indirectly to meet the actual cost of the assets. More importantly, in this case, there has been no action on the part of the assesee between the date of assessment and the date of filing of a petition / application under section 264 of IT Act unlike the instant case where the assessee has been relentlessly pursuing his effort. In the considered opinion of this court, in the case on hand, the writ petitioner has not only been relentlessly pursuing his case, but has even been pursuing in a manner which can be described as tenacious. More importantly, the first step in this relentless effort was taken well within the prescribed limitation period, i.e., on 05.08.2011 when a revised return was filed before one year elapsed on 22.10.2011.

20 Be that as it may, further perusal of Vinay Extraction Pvt. Limited case reveals that a judgment rendered by another Hon'ble Division Bench of Gujarat High Court in Karamchand Premchand Pvt. Ltd. Vs. Commissioner of Income Tax, Gujarat [(1975) 101 ITR 46 (Guj)] was distinguished. While distinguishing Karamchand Premchand case, the Division Bench of Gujarat High Court had also reiterated that whether sufficient cause is made out or not is always a question of fact depending upon the facts and circumstances of each case and has to be established based on records of that case. This is articulated in paragraph 6 of the order and the most relevant portion of paragraph 6 reads as follows :

> "6.....However, it is equally well settled that a person invoking the decision of the appellate or revisional authority beyond the prescribed period of limitation is required to show sufficient cause which would include showing that the petitioner/appellant was either bona fide pursuing his remedies or was prevented by sufficient cause from pursuing his remedies. Whether sufficient cause is made out or not is always a question of fact depending upon the facts and circumstances of each case and has to be established on record. ...."

21 In this case, Division Bench of Gujarat High Court had gone a step further and held that the judgments of Courts are not to be read as Euclid's theorems nor the observations therein as provisions of Statutes. The Division Bench has held that observations in a judgment must be read in the context in which they appear and that each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. The Division Bench of Gujarat High Court had quoted Cardozo and held that matching the colour of one case against the colour of another cannot be the basis for precedents. This is articulated in paragraph 9 of Vinay Extraction Pvt. Limited case and this Court deems it appropriate to extract the entire paragraph 9 which reads as follows :

> "9.The decision in Karamchand Premchand's case is, however, required to be read in light of the facts of that case and the reasons given by this Court for holding that the petitioner had shown sufficient cause for condonation of delay. As per the settled legal position, the Courts should not place reliance on decisions without discussing as

to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Judgments of Courts are not to be read as Euclid's theorems nor the observations therein as provisions of a statute. The observations in a judgment must be read in the context in which they appear. Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not decisive."

22 Therefore, this court has no difficulty in accepting the submission of learned counsel for writ petitioner that Vinay Extraction Pvt. Limited case is clearly distinguishable.

23 In this regard, this Court deems it appropriate to also refer to the celebrated Padma Sundara Rao case being Padma Sundara Rao Vs. State of Tamil Nadu case reported in (2002) 3 SCC 533 with regard to precedents and the most relevant paragraph is paragraph 9 and the same reads as follows :

"9.Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom British Railways Board v. Herrington, (1972) 1 All ER 749 (HL)]] . Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

24 Drawing inspiration from Vinay Extraction Pvt. Limited case and Padma Sundara Rao case, this Court is of the considered view that such an exercise of applying precedents is neither an algorithms nor an alchemy qua factual matrix and legal principles.

25 This takes us to the next case law, namely, H.Dohil Constructions Company Private Limited Vs. Nahar Exports Limited and another reported in (2015) 1 SCC 680. Nahar Exports Limited case is a case wherein there was nine days delay in filing, but there was 1727 days in refiling. In this context, the issue of deficit court fee was also inextricably dovetailed and an argument was projected that section 149 of 'The Code of Civil Procedure, 1908' ('CPC' for brevity) provides for deficit court fee to be paid. It is in this context that Hon'ble Supreme Court held that condonation of delay is impermissible obviously on the factual matrix of that case. Therefore, in the considered opinion of this Court, Nahar Exports Limited case is clearly distinguishable on facts and is therefore, not applicable to the instant case.

26 This takes us to Rane (Madras) case rendered by Hon'ble Division Bench of this Court in Tax Case (Appeal) SR.No.91371 of 2010 dated 10.06.2016. This is a case of delay in filing a tax case before Division Bench of this Court. General principles have been adverted to and on the facts of that case, delay was not condoned. This Court has no difficulty in accepting the submission of learned counsel for writ petitioner that even broad similarities referred to in Vinay Extraction Pvt. Limited case is not there between the case on hand and Nahar Exports Limited case. This is more so as Rane (Madras) case (as placed before this Court, i.e., MANU/TN/1936/2016), does not give elaboration of facts. More importantly, it is pointed out by learned counsel for writ petitioner that personal hearing was held on 27.12.2018 and in the personal hearing, the chronicle of events and papers / documents forming part of records were highlighted to explain the delay and the bona fides of writ petitioner in taking diligent and relentless efforts qua exclusion / exemption.

27 This takes us to one other aspect of the matter. Esha Bhattacharjee case being Esha Bhattacharjee Vs. Raghunathpur Nafar Academy reported in (2013) 12 SCC 649 has been referred to in more than one case law in the aforesaid case laws which have been discussed thus

far. Esha Bhattacharjee case is an authority for the principle that when there is delay condonation application, facts have to be articulated in detail and that delay condonation application cannot be filed casually in generic terms. There can be no disagreement on this principle and there is none before this Court.

28 As already alluded to supra, learned counsel for writ petitioner at the very outset very fairly submitted that writ petitioner should have stated and articulated the reasons for delay with specificity and clarity. Having said that, learned counsel for writ petitioner predicated his case on the ground that the entire chronicle of events alluded to supra bring into sharp focus trajectory of the consistent, relentless and recurrent efforts that were taken by writ petitioner with regard to getting Rs.19.84 lakhs income excluded / exempted qua returns erroneously filed for said AY.

29 Therefore, while there is no disagreement with regard to Esha Bhattacharjee case principle, this is a case where the facts and chronicle of the same were undisputably available as part of records before third respondent who passed the impugned order. This is not a case where records did not speak for themselves with regard to relentless efforts taken by writ petitioner which in turn explained what is being construed as delay.

30 Besides the aforementioned five case laws set out supra, impugned order also refers to a Bombay High Court judgment being Manoj Kumar Kedia Vs. Pr. Commissioner of Income Tax [2016-LL-0811-29] in W.P.No.1616 of 2016. However, Revenue counsel fairly submitted that it is not traceable. Learned counsel for writ petitioner submitted that his position is no different. This Court was unable to find it in its research also and therefore, this Court has not embarked upon discussion on Manoj Kumar Kedia case as the entire case law should be before this Court for any discussion on the same. Be that as it may, to be noted, being a Bombay High Court citation with regard to precedents, it would be of persuasive value.'

22. Besides Section 264 of IT Act being akin to Section 25 of said Act, Section 8 of said Act is of relevance and the same reads as follows:

'8.Wealth-tax authorities and their jurisdiction.
The income-tax authorities specified in Section 116

of the Income-tax Act shall be the wealth-tax authorities for the purpose of the Act and every such authority shall exercise the powers and perform the functions of a wealth-tax authority under this Act in respect of any individual, Hindu undivided family or company, and for this purpose his jurisdiction under this Act shall be the same as he has under the Income-tax Act by virtue of orders or directions issued under

Section 120 of that Act (including orders or directions assigning concurrent jurisdiction) or under any other provision of this Act.

23. From a perusal of Section 8 it comes to light that exercise of powers of respondent under Section 25 of said Act is clearly comparable with exercise of powers of Principal Commissioner /commissioner under Section 264 of IT Act.

24. Owing to all that have been set out supra, it follows as a sequitur that this is a fit case to set aside Impugned Order I. Impugned order I being order dated 10.08.2018 bearing reference C.No.205/Pr.CIT-1/2017-18 is set aside and Writ Petition No.28432 of 2019 is allowed.

25. With regard to Impugned Order II, the same is set aside insofar as it rejects the writ petitioner's request for condonation of delay for Assessment years 2003-04 to 2010-2011. The other part of impugned order II wherein prayer for condonation of delay for Assessment Years 2011-12 and 2012-13 was acceded to is sustained. Now that the delay has been condoned, request of writ petitioner for refund shall be examined on merits, in accordance with law and disposed of as expeditiously as possible and in any event within 12 weeks from the date of receipt of a copy of this order.

Writ petitions ordered on above terms. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Commissioner of Income Tax-5
   Room No.701, VII Floor, New Block
   No.121, Uthamar Gandhi Road
   Chennai – 600 034.

2. The Principal Commissioner of Income Tax-5
   528, 5th Floor, Wanaparthy Block
   No.121, M.G.Road
   Chennai – 600 034.

+1cc to M/s.S.Gayathri, Advocate Sr.68528
+2cc to M/s.Hema Murali Krishnan, Advoate Sr.68368 and 18366

W.P.No.28432 of 2018 &
W.P.No.4754 of 2019

ks[co]
srg 16/09/2019