IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.372 OF 2020

Dharmen Rameshchandra Shah	…	Petitioner
Vs.		
The Income Tax officer, Ward 25(1)(1), Mumbai and another	…	Respondents

Mr. Mihir Naniwadekar a/w. Ms Farzeen Khambatta for Petitioner.
Mr. Sham Walve for Respondent No.1.

CORAM : UJJAL BHUYAN,
MILIND N. JADHAV, JJ.

DATE : MARCH 06, 2020

P.C. :

Heard Mr. Naniwadekar, learned counsel for the petitioner and Mr. Walve, learned standing counsel Revenue for respondent No.1.

2. Smt. Sheela Venkatesan, Income Tax Officer, Ward 25(1)(1), Mumbai is also present before the Court.

3. By filing this petition under Article 226 of the Constitution of India, petitioner has assailed legality and validity of order dated 01.12.2019 passed by respondent No.1 i.e., Income Tax Officer, Ward 25(1)(1), Mumbai under Section 188A of the Income Tax Act, 1961 (briefly 'the Act' hereinafter) directing him to make payment of the tax arrears as mentioned in the order.

4. Case of the petitioner is that he is an assessee under the Act assessed to tax as an individual. Prior to 31.03.2012, petitioner was a partner in the partnership firm M/s. Sambhav Enterprises registered under the Indian Partnership Act, 1932, referred to hereinafter as the 'firm'. With effect from 31.03.2012, petitioner retired from the said firm and ceased to be a partner.

5. Notice under Section 188-A dated 06.11.2019 was issued by respondent No.1 to the petitioner as a partner of the firm stating that a demand of Rs.30,85,40,488.00 was raised in the case of the firm for the assessment years 2011-12 and 2012-13, the break-up being Rs.3,79,370.00 for the first assessment year and Rs.34,61,410.00 for the second assessment year. It was stated that being one of the partners of the firm with share of profit / loss @ 20%, respondent No.1 proposed to invoke the provisions of Section 188-A of the Act to recover the outstanding demand from the petitioner in the capacity of a partner for the assessment years 2011-12 and 2012-13 that is upto 31.03.2012 to the extent of Rs.38,40,780.00 plus interest under Section 220(2) of the Act. Hence, the show cause notice.

6. Petitioner replied to the show cause notice on 11.11.2019. It was mentioned therein that there was no demand pending in the case of the firm relating to the aforesaid two assessment years because against the relevant assessment orders, the firm had preferred appeals before the Commissioner of Income Tax (Appeals) - 37, Mumbai and the Commissioner of Income Tax (Appeals) i.e., the first appellate authority had allowed the appeals by deleting the additions / disallowances except some minor additions / disallowances. Copies of the orders passed by the first appellate authority dated 02.05.2017 were enclosed with the show cause reply.

7. However, by the impugned order dated 01.12.2019, respondent No.1 while taking note of the reply given by the petitioner observed that the reply was given only after service of notice. Considering the firm and the partners as defaulters, it was held that petitioner as partner of the firm is jointly and severally liable along with the firm for payment of the tax arrears.

8. It may be mentioned that in the body of the said order not only

demand for the assessment years 2011-12 and 2012-13 were raised but also for the subsequent assessment year 2013-14 when admittedly petitioner had retired as a partner of the firm with effect from 31.03.2012.

9. Aggrieved by the above, present writ petition has been filed.

10. When learned counsel for the petitioner pointed out the anomaly, Mr. Walve, learned standing counsel submitted on the basis of the instructions received from respondent No.1 who is present in the Court that there is no demand payable by the firm for the assessment years 2011-12 and 2012-13 and consequently, question of raising of any demand against the petitioner does not arise. Further, petitioner having retired as partner of the firm with effect from 31.03.2012 raising any demand against the petitioner for assessment year 2013-14 and onwards also does not arise.

11. In view of the statements made, we set aside the impugned order dated 01.12.2019 issued by respondent No.1.

12. Writ petition is accordingly allowed but without any order as to costs.

(MILIND N. JADHAV, J.) **(UJJAL BHUYAN, J.)**

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