

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 529 OF 2022

Falcon Retreat Private Limited Rep. Aut. Rep. ... Petitioners
Anju Gadekar

Versus

The Additional Commissioner of Income Tax
Thr. Principal Chief Commissioner of Income
Tax & 4 Ors. ... Respondents

Mr. A. D. Bhobe, Advocate *with Ms. S. Shaikh, Advocate for the
Petitioners.*

Ms. Susan Linhares, Standing Counsel *for the Revenue-Respondent
nos. 1, 2 and 3.*

Ms. Amira Razaq, Advocate *for the Respondent No.4-Official
Liquidator.*

Mr. Pravin Faldessai, Deputy Solicitor General of India *for the
Respondent no.5.*

CORAM: **G. S. KULKARNI &
BHARAT P. DESHPANDE, JJ.**
DATED: **24 November, 2022**

ORAL ORDER

1. We have heard Mr. Bhobe, learned Counsel for the petitioners, Ms. Susan Linhares, learned Standing Counsel for the Respondent nos. 1, 2 and 3-Revenue, Ms. Amira Razaq, learned Counsel for the

Respondent no.4–Official Liquidator and Shri Faldessai, learned Deputy Solicitor General of India for the Respondent no. 5.

2. The challenge in this petition filed under Article 226 of the Constitution, is to the four assessment orders dated 23 March, 2022, passed by the Respondent no.1 being assessment orders under Section 147 read with Sections 144 and 144-B of the Income Tax Act, 1961, (for short, the 'IT Act'). Consequent to the said assessment orders, notices are issued to the petitioners dated 11 August, 2022, so as to initiate penalty/recovery proceedings. Such notices are issued under Section 274 read with Section 271F of the IT Act. These notices are also challenged in the present proceedings. The assessment orders pertain to the four assessment orders of the year 2014–2015, 2015–2016, 2016–2017 and 2017–2018. It would be appropriate to note the prayers as made in the Writ Petition, which read thus :

“a) Issue a Writ of Certiorari or Writ in the nature of Certiorari or any other appropriate Writ, order or direction quashing and setting aside the Impugned Orders dated 23/3/2022 bearing DIN Nos. ITBA / AST /S / 147 / 2021-22 / 1041388030(1); ITBA/AST/S/147/2021 22/1041392267(1); ITBA / AST / S / 147 / 2021-22 / 1041392449(1); ITBA / AST / S / 147 / 2021-22 / 1041392840(1) and the Impugned Penalty Notices dated 11 August 2022 bearing DIN & Letter No. ITBA/PNL/F/17/2022-23/1044607813(1); ITBA / PNL /

F / 17/2022– 23/1044608656(1); ITBA/PNL/F/17/2022– 23/1044616019(1) and 16 August 2022 bearing DIN & Letter No. ITBA/PNL/F/17/2022–23/1044670634(1) issued by respondent nos.1

b) In the alternative the petitioners prays for issue of a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, order or direction quashing the Impugned dated 23 March 2022 and the Impugned Penalty Notices dated 11 August 2022 and 16 August 2022 and remand the reassessment proceedings before respondent nos.1 and/or 2 for *de novo* consideration on merits after giving adequate opportunity of hearing to the petitioner in compliance with the principles of natural justice.

c) In the alternative to Prayer (a) and (b) for issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, order or direction, directing the respondents to grant access to the petitioner to the e-filing portal in relation to the Former PAN so as to enable the petitioner to access the complete assessment records and leave to file appeals electronically or physically appeals against the Impugned Orders; and for a direction to the respondents/ appropriate authorities, to take such appeals on record and a further direction to the respondents to make available physical set of the entire assessment records to the petitioner.

d) During the pendency of these proceedings grant an order or direction staying the operation and implementation of the Impugned Orders dated 23/3/2022, 11/8/2022 and 16/8/2022.

e) Pass such and other reliefs as this Hon,ble Court deems fit and proper.

f) Costs of this petition.”

3. The challenge of the petitioner to the impugned assessment orders as mounted in the present proceedings is basically on the premise that the petitioner, which is a private limited Company, was directed to be wound up by an order passed by this Court dated 26 June, 2009, in the proceedings of Company Petition No.19 of 2006, instituted by one “*Shekhar Electricals*”, one of the creditors of the petitioner. The case of the petitioner is that there were borrowings by the petitioner from the Economic Development Corporation and the State Bank of India. It is contended that in the further proceedings almost after a period of nine years, the winding up order came to be recalled by order dated 3 May, 2018, passed by this Court. The case of the petitioner is that the assessment in question pertain to the period, during which the winding up proceedings against the petitioner was at large and subsisting when the petitioner was under the control of the Official Liquidator–respondent no.4. The petitioners have set out various grounds to contend as to why the impugned orders would be required to be held to be bad, illegal and prejudicial to the petitioners considering the several circumstances, as also a circumstance that entire proceedings are being taken up on

the permanent account number of the petitioners which was prevailing at the relevant point of time.

4. The petitioner has contended that the business of the petitioner was admittedly at a stand still and the only relevant amounts which the Revenue has taken to be relevant were the amounts which were either lying in the escrow account and certain amounts which were deposited with the State Bank of India. It is contended that on such basis, the Revenue has *inter alia* added the income at the hands of the petitioners stating that the State Bank of India had deducted tax at source on the interest.

5. Ms. Razaq, the learned Counsel for the Official Liquidator has disputed the contention as urged on behalf of the petitioner to contend that the statement of affairs itself was not filed before the Official Liquidator and which ought to have been filed in respect of the position as it stood on the date of winding up of the Company. She has submitted that also no records were furnished to the Official Liquidator and no funds of the Company were lying with the Official Liquidator. She would also submit that in so as far as the Official Liquidator is concerned, the Official Liquidator has acted in

accordance with law and the contentions and/or any allegations of the Official Liquidator ought not to be accepted.

6. The Revenue is represented by Ms. Linhares, who has submitted that the impugned orders as also the penalty action as been initiated against the petitioner is as per law.

7. We have heard the learned Counsel for the parties. We have also perused the record and the impugned orders. We are of the opinion that the petitioner is well conscious as clearly seen from prayer clause (c), that an alternate remedy of appeal is available to the petitioner which needs to be filed before the Commissioner of Income Tax (Appeals) as per the provisions of Section 246 of the Income Tax Act. However, as the immediate concern of the petitioner is with regard to the penalty and recovery proceedings thereof, the present petition was moved contending that the alternate remedy is not an efficacious remedy. However, considering the peculiar facts of the case, we are of the opinion that the petitioner needs to avail of the alternate remedy as available to the petitioner in law i.e. by filing appeal before the Commissioner of Income Tax (Appeals).

8. Insofar as the apprehension of the petitioner in regard to the penalty/recovery proceedings are concerned, in our opinion, it would be appropriate that the said proceedings shall not be taken forward till the Appellate Authority decides the appeals.

9. We, accordingly, dispose of the petition with the following order :

ORDER

(i) The petitioner is permitted to file an appeal assailing the impugned re-assessment orders before the Appellate Authority (Commissioner of Income Tax (Appeals)). The Appeals be filed within a period of two weeks from today. If the same are filed, the Appellate Authority shall make an endeavour to dispose of the appeals as expeditiously as possible and within a period of three months from the date of the appeals being filed.

(ii) All contentions of the parties on the merits of the appeals are expressly kept open.

(iii) Till the appeals are decided, considering the peculiar facts of the case and without this order being treated precedent in any manner

whatsoever, the penalty/recovery proceedings against the petitioner shall not proceed.

(iv) The petitioner is directed to co-operate in the early disposal of the appeals.

(v) It is clarified that our directions that the recovery proceedings against the petitioner shall not proceed till the disposal of the appeals, shall not be construed to be any expression on the merits of the rival contentions. The Appellate Authority shall decide the appeals/proceedings on its own merits and without being influenced by such direction.

10. At this stage, it is informed by the learned Counsel for the Revenue, that access to the e-filing portal for the filing of returns shall be provided to the petitioner.

11. Disposed of in the above terms. No costs.

BHARAT P. DESHPANDE, J

G. S. KULKARNI, J

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