IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8861 OF 2022

Optra Health Pvt. Ltd. .. Petitioner
Vs.
Principal Chief Commissioner of Income Tax, Pune & Ors. .. Respondents

Mr. P.S. Jaitely, Sr. Advocate, with Mr. Sham Walve, i/by Mr. Sameer Dalal, for the Petitioner.
Mr. Suresh Kumar for the Respondents.

CORAM : DHIRAJ SINGH THAKUR &
VALMIKI SA MENEZES, J.J.

DATE : 3RD OCTOBER, 2022.

P.C. :

1. A Return of Income was filed for the relevant Assessment Year 2017-18 in the name of Optra Technologies Pvt. Ltd. on 25th November 2017; however, by that date, the name of the company had already been changed, with the approval and sanction of the Ministry of Corporate Affairs vide communication dated 31st January 2017. It needs to be stated that the PAN number reflected in the Income Tax Return filed by the assessee for the relevant assessment year was correctly mentioned. On account of a mismatch between the PAN number reflected on the Income Tax Return and the name of the company, a communication dated 29th May 2018 came to be issued by the Deputy Commissioner of Income Tax, CPC Bangalore, asking the petitioner to rectify the defects within a period of fifteen days from the date of

receipt of such a communication. The needful not having been done, the Income Tax Return filed by the assessee was declared to be invalid. With a view to overcome this difficulty, an application under Section 119 of the Income Tax Act, 1961 was filed by the petitioner before the Principal Commissioner of Income Tax-2, Pune, which was finally rejected by virtue of the order impugned dated 9th September 2021 by the Principal Chief Commissioner of Income Tax, Pune, as communicated by the Deputy Commissioner of Income Tax (HQ) (Coord & Tech), Pune.

2. The case set up in the present writ petition as also before the Principal Chief Commissioner of Income Tax was that the requisite rectification could not be incorporated pursuant to the communication dated 29th May 2018 within the prescribed fifteen days time inasmuch as the other e-mail, on which such a communication had been addressed, belonged to Mr. Prasad Sathe, the previous Chief Finance Officer, who had left the company. This explanation was disbelieved by the concerned authority, as reflected in the order impugned, on the ground that Mr. Prasad Sathe had continued to be in the employment of the company since substantial salary of Rs.26,88,137/- had been paid to him by the company during the financial year 2018-19. In those circumstances it was held that the explanation rendered for not being able to file rectified Income Tax Return was unacceptable. Counsel for the petitioner has tried to explain the circumstances in which Mr. Prasad Sathe remained associated with the company and also the fact that he was not associated actively in the day-to-day functioning of the company. However,

Mr. Jaitely, learned counsel appearing for the petitioner states that had the Principal Chief Commissioner of Income Tax afforded the petitioner an opportunity of being heard, as had been prayed vide its communication dated 24th March 2021, all these facts could have been explained in detail. It is stated that no justifiable reason is reflected in the order impugned as to why such an opportunity of being heard, even when demanded, was not afforded to the petitioner. It is stated that even when Section 119 of the Act did not envisage grant of personal hearing or granting an opportunity of being heard to the petitioner, yet, since the order impugned would have visited the petitioner with consequences, such an opportunity of being heard ought to have been granted.

3. Mr. Suresh Kumar, learned counsel appearing for the respondents states that the Principal Chief Commissioner of Income Tax had dealt with all aspects of the matter in detail, including the explanation rendered by the petitioner for its inability to file Income Tax Return within the time prescribed and that there would be no purpose of sending or remanding the matter back for being considered afresh, as was prayed by learned counsel for the petitioner.

4. Having heard learned counsel for the parties at length, we are of the opinion that the petitioner ought to have been given an opportunity of being heard, especially when such an opportunity was sought for by it. The petitioner would also furnish all such material, as the said authority may

require, to finally determine as to whether the communication dated 29th May 2018 addressed to the erstwhile Chief Finance Officer's e-mail id was actually to the knowledge of the company or not.

5. Be that as it may, we set aside the order impugned dated 9th September 2021 passed by the Principal Chief Commissioner of Income Tax, Pune and remand the matter back to the Principal Chief Commissioner of Income Tax, Pune for passing appropriate order, after affording the petitioner an opportunity of personal hearing. Appropriate orders be passed within a period of three months from the date of communication of this order.

6. The petition is disposed in the above terms.

[VALMIKI SA MENEZES, J.] **[DHIRAJ SINGH THAKUR, J.]**

SNEHA ABHAY DIXIT Digitally signed by SNEHA ABHAY DIXIT Date: 2022.10.12 11:47:35 +0530