IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3388 OF 2004

Amrutlal V. Rukhan ...**Petitioner**
Versus
Rao Ranvijay Singh & anr. ...**Respondents**

Mr. Riyaz S. Padvekar, i/b Vishnu S. Hadade, for the Petitioner.
Mr. Suresh Kumar, for the Respondents.

CORAM: K. R. SHRIRAM & N. J. JAMADAR, JJ.
DATED: 6th JANUARY, 2022
(Video Conferencing)

PC:-

1. The petitioner is an individual. At the time the petition was filed, the petitioner was assessed to income tax in Mumbai. Mr. Suresh Kumar states that now the PAN has been transferred to Bangalore. Mr. Suresh Kumar states that there are two PAN numbers for the same name and both are now assessed in Bangalore.

2. The petitioner was regularly assessed to income tax till Assessment Year 1992-1993. Thereafter the petitioner did not file Return of Income till Assessment Year 2000-2001. On 7th December, 2001, search action was conducted by Income Tax

Department, after which, it is petitioner's case that, petitioner has been regularly filing Return of Income.

3. In the Assessment Year 1996-1997, which is the period when the petitioner was not filing his Return of Income, the petitioner had paid advance tax of Rs.5,00,000/- in the Income Tax Account of State Bank of India, Masjid Bandar Branch, Mumbai. This amount was paid in cash on 27th March, 1996. Mr. Suresh Kumar states that the fact that the petitioner has paid this amount is not in issue.

4. Consequent to search action, the block assessment proceedings was started in the case of petitioner and the notice under Section 158-B and 158-C of the Income Tax Act, 1961 ("the Act") was issued to the petitioner to file Return of Income for the block period 1-4-1995 to 7-12-2001. According to the petitioner, as he had been filing his regular Return of Income for the assessment year forming part of the block period, he had declared the entire amount of income during the said period as his undisclosed income.

5. The petitioner had filed Return of undisclosed income for the block period at Rs.27,50,000/- which included income for Assessment Year 1996-1997 of Rs.3,47,773/-. The petitioner did not claim adjustment of the advance tax of Rs.5,00,000/- paid or claimed refund of the amount paid.

6. The petitioner had made an application under Section 119 of the Act to CBDT by letter dated 9th October, 2003 seeking direction to refund the advance tax payment of Rs.5,00,000/-. Thereafter, on some advice received, the petitioner filed an application relying on a circular of CBDT issued on 30th October, 2003 to the Chief Commissioner of Income Tax. This application was filed on 19th November, 2003 through the petitioner's Chartered Accountant seeking refund of the advance of the tax of Rs.5,00,000/- for Assessment Year 1996-1997 along with interest due thereon under Section 214 of the Act or in the alternative, to direct the concerned Income Tax Officer to adjust this amount against the tax liability on the undisclosed income for the block period 1-4-1995 to 7-12-2001. This application came to be rejected by an order dated 29th April, 2004 passed under Section 119(2)(b) of the Act on the ground that there was a delay in filing of the Return for the Assessment Year 1996-1997 and not condoning the delay. Aggrieved by this order, the petitioner has approached this Court by way of this writ petition.

7. We have heard the Counsels and also have considered the petition and the reply to the petition. Even in the impugned order, the fact that the petitioner had paid advance tax of Rs.5,00,000/- has not been denied. The rejection primarily is on the ground which can be seen from paragraph 4 of the impugned order, which reads as under:

> "**4**. On a careful consideration of the submissions made by the learned counsel and also considering the factual matrix of the case, I am of the considered opinion that the assessee's petition for the condonation of delay merits no acceptance. It is an admitted fact that the assessee stopped filing the returns of income after assessment year 1992-1993 and started filing the returns of income again after assessment year 2000-2001 only after search and sizure operations were carried on by the revenue. Such a blatant complacency cannot be explained by taking refuge in the smokescreen of "bonafide belief". Further, the period relevant to assessment year 1996-1997 stands covered in the block return. None of the conditions as stated in the CBDT's instruction as referred to above stands satisfied in this case. Further this is not the first return of the assessee because it has already been admitted that the assessee was assessed to tax upto assessment year 1992-1993. In addition, it may not be out of place that the assessee has not brought out any case of genuine hardship which can pave the way for the condonation of the delay."

8. In our view, if a party has paid tax, certainly the party is entitled to be given credit. Therefore, we are inclined to dispose the petition with the following orders:

(a) The delay, if any, in filing the Return of Income for Assessment Year 1996-1997, is condoned.

(b) The petitioner shall file an application similar to the application dated 19th November, 2003, which is at

Exhibit-E to the petition, before the concerned authority in Bangalore.

(c) The concerned authority shall consider the same and dispose of the application within 12 weeks after receiving the application.

(d) The concerned authority will examine the documents to be filed by the petitioner and decide if the petitioner has paid more amount of tax than what was due as tax from the petitioner for the block assessment period.

(e) If there are any other outstanding demands pending apart from the assessment years which are subject matter of this petition, the Department is at liberty to adjust any amount that the Department may have to refund pursuant to this order and the petitioner will not insist on receiving a separate intimation under Section 245 of the Act.

(f) The petition accordingly stands disposed of.

(g) We clarify that we have not made any observations on the merits of the matter.

[N. J. JAMADAR, J.] **[K. R. SHRIRAM, J.]**