IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO.3289 OF 2023

Ramchandra K. Mendadkar .. Petitioner.
v/s.
Union of India & Others .. Respondents.

Mr. Fauzan Shaikh with Mr. R. K. Mendadkar, for Petitioner.
Ms. Swapna Gokhale, for Respondents.

CORAM: K. R. SHRIRAM &
FIRDOSH P. POONIWALLA,JJ.
DATED : 25th JULY 2023.

P.C:-

With the consent of the Counsel, Petition is being taken up for final hearing at the stage of admission itself. Rule, made returnable forthwith.

2 Petitioner is an advocate, practicing in this Court and various Courts including the Hon'ble Supreme Court of India since over 35 years.

3 On 16th July 2018, when Petitioner was travelling by Vistara Airlines from Mumbai to Delhi, it is stated in the Petition, to attend to two matters in the Supreme Court listed on 17th July, 2018, at the Delhi Airport, Petitioner was intercepted and searched by the Air Intelligence Unit (AIU) of Income Tax department. During the search proceedings, the Officer of AIU found Rs. 16 lakhs cash on Petitioner. The amount was

seized under Panchnama and summons under Section 131(1A) of the Income Tax Act, 1961 (the Act) was issued to Petitioner for recording statement in respect of seizure of cash. Petitioner's statement was recorded and Petitioner gave his own explanation along with documents to justify that the amount of Rs.16 lakhs was not undisclosed income. The Assessing Officer rejected the explanation and passed an order dated 28th April 2021. The Assessing Officer added this amount of Rs.16 lakhs as unexplained money under Section 69-A of the Act and determined the total income at Rs.57,26,500/-. Petitioner had filed return of income of Rs.41,26,500/- for A.Y. 2019-20. The computation sheet was also provided and Petitioner was informed that Petitioner had to pay Rs.15,81,282/- as further tax/ penalty/ interest etc. Petitioner challenged this order before the Commissioner of Income Tax (Appeals) [CIT(A)] who concurred with the finding of the Assessing Officer. Petitioner challenged this order before the Income Tax Appellate Tribunal (ITAT) on various grounds. The grounds raised were as under:-

1. CIA(A) has decided appeal with a closed mind and without considering facts and circumstances of the case.
2 CIT(A) has erred to disbelieve the confirmation of Petitioner's client, Mr. Sagun Naik having deposited cash of Rs.6,00,000/- with Petitioner for his matter in Supreme Court.
3 CIT(A) cannot demand explanation of source of the amount received from Mr. Sagun Naik.

4 CIT(A) had disbelieved receipt of Rs.16,90,000/- during July, 2018 in comparison to total receipts of Rs.50,40,000/- during FY 2018-19 only on the basis of surmises.

5 CIT(A) has erred to disbelieve the possession of cash of Rs.16,00,000/- in July 2018 in cash summary and raised objections of non transferring it digitally only due to assumptions and surmises.

6 Petitioner's explanation for possessing cash and evidences in support of attending matters in Supreme Court have been ignored and glossed over without considering the merit in the case.

7 The amount received by Petitioner from Mr. Biren Limbachiya Rs.140 lacs was duly accounted for in the audited books of account and hence, section 69A cannot be invoked for the same.

4 The ITAT after hearing Petitioner and Revenue, by an order dated 12th May 2023, allowed the Appeal. The ITAT, on facts, accepted Petitioner's explanation that out of the amount of Rs.16 lakhs, Petitioner had received Rs.5,75,000/- in cash from one Sagun Naik and a sum of Rs.17 lakhs from one Biren Limbachiya by 9 cheques from 10th April 2018 to 26th April 2018 and on perusal of the ledger account of the professional fees maintained by Petitioner, these amounts have been accounted for. ITAT, after perusing the records also found that the cash balance of Petitioner as on the date of confiscation was Rs.19,81,403/- and Petitioner has been periodically withdrawing the money from the bank account in cash which is also substantiated by the entries in the bank statement. ITAT accepted Petitioner's contention that the source of Rs.16 lakhs seized

from Petitioner is the professional income and therefore cannot be treated as unexplained income. The ITAT also found that the provisions of Section 69-A of the Act provides that the addition can be made if assessee is found to be owner of the money that is not recorded in the books of account and the assessee did not offer explanation about the source of money. ITAT accepted the explanation offered by Petitioner that the amount of Rs. 16 lakhs has been recorded in the books of account and in the facts of the case, amount of Rs.16 lakhs seized at Delhi airport cannot be treated as unexplained income. ITAT therefore deleted the addition amount under Section 69A of the Act.

5 There is no appeal filed by Respondents impugning this order of the ITAT. Of course, the time of 120 days provided has not expired.

6 Affidavit in reply of one Ambernath B. Khule, affirmed on 10th July 2023 has been filed. In the affidavit, the affiant dealt with the matter on merit which has already been held in favour of Petitioner by ITAT. Strangely, affiant also says that the ITAT has erred in considering the justification given by CIT(A) and the Assessing Officer and this Court is requested not to consider order of ITAT while adjudicating the present appeal.

7 It is of utmost importance that Revenue Officers are bound by

the decisions of the Appellate Authority. Order of the Appellate Commissioner is binding on the Assistant Commissioner and the order of the Tribunal is binding upon the Additional Commissioner and below. The principal of juridical discipline requires that orders of the higher appellate authority should be followed by the subordinate authorities. For the affiant – Ambernath B. Khule to state that the ITAT erred and the Court should not consider the order of the ITAT is highly objectionable. If the Officers of the Income Tax Department are allowed to continue this way, it will result only in undue harassment to assessees and chaos in administration of tax laws.

8 At this stage, Ms. Gokhale requested that paragraph 5.7 of the affidavit of Kulhe be considered to have been withdrawn. In view of this request of Ms. Gokhale, we are not issuing or passing any strictures against said Ambernath B. Khule but we only hope that the concerned authority – Respondent Nos.1 to 4 will perhaps have an orientation session for all its Officers to train them suitably.

9 In the circumstances, we allow the Petition in terms of prayer clause (a) which reads as under:-

> *" that this Hon'ble Court be pleased to issue a Writ of Mandamus and/or any other Writ, Order or Direction in the nature of Mandamus directing the Respondents*

to return amount of Rs.16 lakhs seized from the Petitioner on 17.7.2018."

10 The amount of Rs. 16 lakhs shall be returned on or before 31st August 2023. If this amount of Rs.16 lakhs is not returned to Petitioner by the department on or before 31st August 2023, Petitioner shall be paid interest on this amount of Rs.l6 lakhs from 12th May 2023, the date of pronouncement of the order by ITAT until payment/realization. The rate of interest payable will be as per Section 244A of the Act.

11 Petition disposed. No order as to costs.

(FIRDOSH P. POONIWALLA,J.) **(K. R. SHRIRAM,J.)**