IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15219 OF 2023

Gewis Engineering India Private Limited **…Petitioner**
Versus
The Principal Chief Commissioner of Income
Tax, Pune & Ors. **…Respondents**

Mr. Rohan Deshpande a/w Mr. Abdul Rehman i/b Mr. Smit Shah for Petitioner.
Mr. Suresh Kumar for Respondents-Revenue.

CORAM: K. R. SHRIRAM &
DR. NEELA GOKHALE, JJ.
DATED: 19th December 2023

PC:-

1. At the outset, Mr. Suresh Kumar requests the matter be stood over so that he can file an affidavit-in-reply. We are not inclined to grant the request of Mr. Suresh Kumar, because the Petition has been served on the department on or about 12th September 2023 and on 11th December 2023, the matter was stood over at the request of Mr. Suresh Kumar. Mr. Deshpande undertakes to file affidavit of service within two weeks. In any case, the facts of the matter does not require any reply to be filed. We felt there is nothing to improvise on or explain the impugned order.

2. Petitioner had filed various applications seeking refund of certain amounts in relation to withholding taxes deposited by its principal for Assessment Year 2010-2011 to Assessment Year 2014-

2015. Prior to filing the applications, Petitioner also preferred to file revised returns under the Income Tax Act, 1961 ("**the Act**") on 29th March 2017, which were after the due dates specified under Section 139(5) of the Act. Petitioner was claiming credit of the foreign taxes paid in Germany and seeking proportionate refund of taxes paid by Petitioner in India.

3. Petitioner filed applications for condonation of delay under Section 119(2)(b) of the Act in filing the revised returns. Copies of various documents were also annexed. Petitioner addressed communications reminding the department about the pending applications. No steps were taken despite reminders.

4. On or about 5th April 2019, Petitioner moved its registered address from Mumbai to Pune and an appropriate intimation letter dated 24th June 2022 was sent to the Jurisdictional Assessing Officer ("**JAO**") in Mumbai and its immediate superiors under the Act about the change in registered address. It was also requested that the entire assessment records upto Assessment Year 2021-2022 be sent to the JAO in Pune. Petitioner's PAN and jurisdiction also came to be transferred from Mumbai to Pune with effect from 19th December 2022.

5. Petitioner thereafter followed up the matter with the appropriate authority in Pune.

6. Petitioner was surprised to receive the impugned communication dated 13th April 2023 stating that the applications for condonation of delay under Section 119(2)(b) of the Act filed by Petitioner for Assessment Year 2010-2011 to Assessment Year 2014-2015 had been rejected. The reason for rejection was that the applications were grossly barred by limitation. The concerned officer has taken the date of Petitioner's application as the date on which the files were transferred from Mumbai to Pune, i.e., 16th January 2023, when Petitioner had filed the application way back in 2017 itself. This, in our view, is an absolutely incorrect stand being taken by the Revenue. We also find that the order/communication has been issued on the letter-head of the Principal Chief Commissioner of Income Tax ("**PCCIT**"), Pune but signed by one Joint Commissioner of Income Tax on behalf of the Principal Commissioner of Income Tax, Pune, when the application has to be heard and disposed by the PCCIT itself. There is no order passed by the PCCIT. In the circumstances, we quash and set aside the order/communication dated 13th April 2023.

7. The PCCIT shall consider the application filed by Petitioner for condonation of delay personally and, if the delay is condoned, to dispose Petitioner's application on merits. Before passing any order, Petitioner shall be given a personal hearing, notice whereof shall be communicated atleast five working days in advance. If Petitioner wishes to record what transpired during the personal hearing, it may file written submissions within three working days from the date of conclusion of the personal hearing.

8. The order to be passed by 29th January 2024 shall be a reasoned order dealing with all submissions by Petitioner.

9. Petition disposed.

10. We clarify we have not made any observation on the merits of the matter.

(DR. NEELA GOKHALE, J.) **(K. R. SHRIRAM, J.)**

GITALAXMI KRISHNA KOTAWADEKAR

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