IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.343 OF 2022
WITH
WRIT PETITION NO.416 OF 2022

Malineee P. Mcmaster … Petitioner
V/s.
Principal Commissioner of
Income Tax & Ors. … Respondents

Mr. Dharan V. Gandhi for Petitioner in both Petitions.
Mr. Suresh Kumar for Respondents in both Petitions.

CORAM : K. R. SHRIRAM &
FIRDOSH P. POONIWALLA, JJ.
DATE : 11th JULY 2023.

P. C.:-

WRIT PETITION NO.343 OF 2022

1. Petitioner, a widow, is a resident of India. Petitioner was earlier resident of United States of America ('USA') and returned to India on 7th August 2012 on transfer of residence from USA. Since then Petitioner has been a resident of India and has been regularly filing her Return of Income.

2. For the Assessment Year ("AY") 2016-17 Petitioner filed a Return of income on 19th July 2016 declaring total income of Rs.28,22,720/-. While in USA, Petitioner did not pay any taxes as her income was exempt in USA. Mr. Gandhi states that Petitioner moved to India after her husband expired.

Petitioner's minor son lives with Petitioner. Petitioner and her son got US $12,804/-each equivalent to Rs.849,326/-(each) at the prevalent rate of exchange as social security benefit from Government of USA. The social security benefit amount that the minor son received was also clubbed with the income of Petitioner in accordance with the provisions of Section 64 of the Income Tax Act 1961("the Act") and offered for tax by Petitioner in her Return of Income for AY 2016-17. The Return of Income was processed and intimation dated 9th October 2016 under Section 143(1) of the Act was communicated to Petitioner.

3. It is averred in the Petition that some time in the year 2019, Petitioner's Chartered Accountant realized that the social security benefit that Petitioner and her minor son received was not chargeable to tax as per Clause-2 of Article-20 of the India-USA Double Taxation Avoidance Agreement ("DTAA"). Petitioner realized that the same was wrongly offered to tax by Petitioner in her Return of Income. Since Petitioner had not preferred any Appeal, Petitioner filed an Application on 23rd August 2019 under Section 264 of the Act for leave to revise the income at Rs.11,25,570/- after deducting Rs. 8,49,326/- X 2 and Petitioner be taxed accordingly. Respondent No.1, by an order dated 30th March 2021, rejected this Application. Respondent No.1 refused to condone the delay and also has

observed that on merit, an opportunity was provided to Petitioner to explain vide communication dated 23rd March 2021 but the same has not been availed.

4. In the Revision Application, Petitioner has explained the reason for the delay in the Petition. It is Petitioner's case that Petitioner has submitted the Application after she came to know about Article 20 of DTAA (between India and USA). The delay has not been condoned only on the ground that Petitioner has failed to submit any explanation/supporting documents to prove that she has been prevented by sufficient cause from making this Application. We do not understand what supporting documents could be submitted for the reason given in the Application because Petitioner has simply stated that she was not aware about the correct position in law until the date on which she made the Application.

5. As regards not availing of the opportunity to explain on the merits, Petitioner has, in response to the notice for hearing dated 20th March 2021 addressed a communication dated 23rd March 2021 in which Petitioner has stated (and we must be conscious of the fact that this was during the peak Covid Pandemic time) that due to Covid it was difficult to approach her representative Shri. Maganlal Thacker, who is 86 years old to submit details as required by him and submit proper reply within such a short time. Short

time is because in the notice dated 20th March 2021 Petitioner was informed that hearing was fixed at 3.00 p.m. on 23rd March 2021. Petitioner had sought eight days time to submit written submissions/representation. Respondent No.2 without considering the request has passed the order on 30th March 2021 and has incorrectly recorded that the opportunity was not availed.

6. Therefore, we condone the delay in filing the Application under Section 264 and remand the matter to Respondent No.1 to consider the Application *de-novo* on merits. Respondent No.1 before he passes any order, shall give a personal hearing to Petitioner, notice whereof shall be communicated at least ten working days in advance.

7. Petition disposed.

8. We hasten to add that we have not made any observation on the merits of the matter.

WRIT PETITION NO.416 OF 2022

1. The facts in this case are identical to the facts in Writ Petition No.343 of 2022, except that the Assessment Year is different-2015-16 in this case. The impugned order is identically worded and the grounds are also identical.

2. In the circumstances, in view of our order passed in Writ Petition No.343 of 2022 and the reasons given therein, impugned order dated 30th March 2021 in this Petition is also quashed and set aside.

3. We condone the delay in filing the Application under Section 264 and remand the matter to Respondent No.1 to consider the Application *de-novo* on merits. Respondent No.1, before he passes any order, shall give a personal hearing to Petitioner, notice whereof shall be communicated at least 10 working days in advance.

4. Petition disposed.

5. We hasten to add that we have not made any observation on the merits of the matter.

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