IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4108 OF 2022

Rajasekaran Nithiyanandhamm … Petitioner

Versus

Principal Commissioner of Income Tax-1, Thane & Ors. … Respondents

Mr. Dharan Gandhi with Ms. Aanchal Vyas for Petitioner.
Mr. Ajeet Manwani with Ms. Samiksha Kanani, for Respondent.

CORAM K. R. SHRIRAM &
DR. N. K. GOKHALE, JJ.
DATED: 28th August 2023

P.C. :

1. Petitioner is an individual, who used to work with the company by name M/s. Dow Agrosciences India Private Limited. He used to get annual taxable salary income of Rs.63,33,732/- on which tax of Rs.15,36,924/- was deducted at source. Employer of Petitioner also took into account various exemptions and allowances under Section 10 of the Income-tax Act, 1961 ("**Act**"), profession tax, loss from the house property, etc.

2. For the Assessment Year 2017-18, Petitioner filed return of income on 29th July 2017 declaring total income of Rs.63,33,732/- and claimed refund of Rs.15,36,924/-. Return was processed by Centralised Processing Centre ("**CPC**") on 25th March 2019 determining a demand of Rs.2,17,670/-.

3. Petitioner filed a revision application under Section 264 of the Act on 21st January 2020 for revision of intimation under Section 143(1) of the Act. In the application, Petitioner has claimed that the CPC, while processing the return, has not considered deduction for allowances exempted under Section 10 of the Act amounting to Rs.1,83,995/-, interest on housing loan and deduction under Chapter VIA. Petitioner also mentioned that income of Rs.1,29,220/- under the income from other sources has been taxed but the TDS deducted on interest income amounting to Rs.12,922/- has not been considered.

4. Assessing Officer was directed to submit his report after taking into consideration correctness of the contentions of the assessee. Assessing Officer submitted a report in which Assessing Officer has stated that before processing of return on 25th March

2019, the Assessee was sent one defective letter dated 7th June 2018 under Section 139(9) of the Act to which "Apparently" Assessee did not respond. The Assessing Officer has also submitted that mistake was totally attributable to the Assessee and he has made no sincere efforts to rectify the mistakes within available time though ample reminders were sent. Other than bald statement, we do not find any detail. It is also stated in the impugned order that thereafter notice was issued to assessee on 20th March 2021 providing an opportunity to put forth his case, which was not availed by Assessee and hence, decision was made on the basis of facts and materials on record. Paragraph 6 of the impugned order says "*Considering the above mentioned facts, petition of Assessee, submissions made by Assessee and report of the Assessing Officer, I find that assessee's contention is not acceptable.*" Based on this, application of assessee has been rejected.

5. Having considered pleadings and hearing the counsel, we find that there is no record to indicate any notice under Section 139(9) of the Act was sent. In any event, Section 139(9) of the Act provides that if the defect is intimated to the Assessee and the defect is not rectified within time provided, notwithstanding anything contained in any provision of the Act, the return shall be treated as invalid return and the provisions of the Act shall apply to the Assessee as if the Assessee failed to file return. Admittedly, return has been processed under Section 143(1) of the Act because in paragraph 3 of the impugned order itself it is mentioned "........... it is seen that before processing of return on 25th March 2019.....". Therefore, even assuming a defect intimation dated 7th June 2018 had been issued under Section 139(9) of the Act, we have to proceed on the basis that defect has been rectified.

6. Next point is regarding the notice of personal hearing given on 20th March 2021 by Respondent No.1. The notice has been digitally signed on 20th March 2021 at 2.51 pm, a Saturday. The hearing is fixed at 11.30 a.m. on 23rd March 2021, Tuesday. Therefore, effectively only one working day notice has been given. There is no explanation as to why such a short notice was given and we could only assume that Respondent No.2 in the last minute realised. Limitation was expiring on 31st March 2021. The Revision Application admittedly was filed on 21st January 2020 and Respondent No.1 sat over the file for more than 14 months.

We have to also note that it was the time when the second Pandemic of Covid was at its peak. It is also averred in the Petition that Petitioner had joined another company M/s. Atul Limited on 4th July 2019 and e-mail of the notice for hearing was sent to the email id that Petitioner has disclosed of his earlier company, i.e., M/s. Dow Agrosciences India Private Limited-nrajasekaran@dow.com.

7. Therefore, we hereby quash and set aside the impugned order dated 26th March, 2021 and remand the matter to Respondent No.1 for *de-novo* consideration.

Application shall be disposed within eight weeks.

Before passing any order, Respondent No.1 shall give personal hearing to Petitioner notice whereof shall be communicated at least five working days in advance.

Order to be passed shall be order on merits on Petitioner's claims in the application dealing with all submissions of Petitioner.

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

SHAMBHAVI NILESH SHIVGAN

Digitally signed by SHAMBHAVI NILESH SHIVGAN Date: 2023.08.31 13:14:45 +0530