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

WRIT PETITION NO. 2582 OF 2021

Biryas Finance and Investments
Private Limited ..... Petitioner
Vs.
Income Tax Officer, Ward 2(1)(1) and anr. ..... Respondents

Mr. Devendra H. Jain a/w Ms. Radha Halbe, for Petitioner.
Mr. Suresh Kumar, for Respondents.

CORAM: K.R.SHRIRAM, J &
FIRDOSH P. POONIWALLA, J.

DATED : JUNE 20, 2023

P.C.

1. Petitioner is impugning an order passed by the Income Tax Appellate Tribunal (ITAT) on 18/05/2021 rejecting Misc. Application No.220/Mum/2020 arising out of ITA No. 3141/Mum/2018 for Assessment Year 2014-15.

2. Petitioner's appeal came to be rejected by ITAT. It is petitioner's case as explained in paragraph 4.4 of the petition, that petitioner's representative, during the hearing, had presented paperbook of 43 pages. Matter was posted on 30/09/2019. During the course of hearing, members of the Tribunal asked petitioner to further demonstrate the stand taken by it that office premises, which was the subject matter, never formed part of block of asset and that no depreciation was

claimed on said property under Income Tax Act, 1961. Petitioner filed statement of accounts for the year ending March 2011, 2012, 2013 and 2014. The documents were filed on or about 30/09/2019 on which date the appeal was heard by the Tribunal. Petitioner filed the statement of accounts by compiling paperbook containing 71 pages. The paperbook contained affidavits, statements and computation of total income for the year ending March 2011, 2012, 2013, 2014 and was filed with the Bench Clerk of the Tribunal. A copy was also served upon the DR on 01/10/2019.

3. In the order dismissing petitioner's appeal passed on 13/11/2019, it is the petitioner's case that the Tribunal has not considered or dealt with the 2nd paperbook containing appromixately 71 pages. Petitioner, therefore, filed Misc. Application in which the impugned order came to be passed. In the impugned order, ITAT referred to the compilation which it considered being a compilation of 43 pages filed by petitioner. Petitioner has stated in the petition that the compilation of 43 pages was the 1st paperbook and the 2nd paperbook filed was of 71 pages. In the impugned order, there is no reference. Mr. Suresh Kumar submitted that the Tribunal has stated that it has considered the paperbook. But what has been considered is only

one paperbook of 43 pages.

4. To the averments in the petition in paragraph 4.4, about 1st paperbook, 2nd paperbook of 71 pages, when it was filed, the fact that the copy was served on respondents etc., there is no denial. In the affidavit-in-reply, there is no reference to paragraph 4.4.

5. On 23/02/2022, this Court had directed respondent no.1 to file an affidavit after inspecting the Records and Proceedings and make a statement whether such a paperbook was filed. The affidavit has been filed, but it only says that paperbook was not found. We would, however, agree with Mr. Jain that just because the paperbook is not found in the Records and Proceedings of the Tribunal, it does not mean it was not filed. Petitioner has filed an affidavit through its Director stating that the paperbook was filed. A copy of the paperbook was also served on 01/10/2019 upon the departmental representative through covering letter addressed to the Registrar, Appellate Tribunal, CGO Building, Mumbai.

6. To the averments of petitioner that such a paperbook was filed, there is no denial. In the circumstances, we would lean in favour of petitioner and accept petitioner's explanation that such a paperbook containing 71 pages was filed. Without going into or dealing with this point, the Tribunal has simply rejected the

Misc. applicatoin.

7. Therefore, we hereby quash and set aside the impugned order dated 18/05/2021 and remand the matter to the Tribunal.

8. Petitioner shall file compilation once again in the Tribunal within 2 weeks. The Tribunal shall consider this compilation to be filed and decide whether its order dated 13/11/2019 dismissing petitioner's appeal requires any modification.

9. Petition disposed.

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

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