IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1790 OF 2024

Rajesh Builders Mumbai …**Petitioner**
Versus
The Principal Commissioner of Income Tax And Ors. …**Respondents**

Mr. Mihir C. Naniwadekar, with Ms. Rucha Vaidya & Ruturaj H Gurjar, for Petitioner.
Mr. Akhileshwar Sharma, for Respondents-Revenue.

CORAM: K. R. SHRIRAM &
DR. NEELA GOKHALE, JJ.
DATED: 26th March, 2024

PC:-

1. Petitioner is impugning an order dated 21st March 2022 passed by Respondent No.1 under Section 264 of the Income Tax Act, 1961 ("**the Act**").

2. Petitioner had filed a return of income ("**ROI**") for Assessment Year ("**AY**") 2017-18 on 7th November 2017 declaring total income at Rs.2,61,09,890/-. During the course of assessment proceedings under Section 143(3) of the Act, while considering the 26AS details, it was observed there was an entry of Rs.49,30,000/- in the name of P.W.D. Division B and R Datia on which tax deducted at source ("**TDS**") of Rs.98,600/- was deducted. Assessee submitted to the Assessing Officer ("**AO**") that the payment does not belong to assessee and

there seems to be an error. Despite that, the AO made an addition of Rs.49,30,000/- relying on this entry in 26AS to the return income of Petitioner and completed assessment proceedings on 26th September 2019 under Section 143(3) of the Act. Petitioner's income was assessed at Rs.3,10,39,890/-

3. Petitioner thereafter followed up with P.W.D. Division, B and R Datia and finally the 26AS was rectified by P.W.D. Division.

4. An application under Section 264 of the Act came to be rejected by Respondent No.1 vide an order dated 21st March 2022 purely on the basis that there was no error in the order dated 26th September 2019 passed under Section 143(3) of the Act. Mr. Naniwadekar states, it was within the powers of Respondent No.1 to direct rectification of the assessment order, particularly, in view of the fact that P.W.D. Division rectified form 26AS. This is Petitioner's main grievance against the impugned order passed under Section 264 of the Act.

5. At the same time, Petitioner has also filed an application under Section 154 of the Act on 24th March 2022, which is still pending before the Deputy Commissioner of Income Tax, Circle 27(3) (Mumbai). This application is pending and Petitioner's apprehension cannot be faulted that the AO might get influenced by the impugned order passed by Respondent No.1.

6. We, therefore, dispose the Petition with following directions:

(a) The AO shall dispose Petitioner's application under Section 154 of the Act on or before 31st May 2024.

(b) The AO shall not be influenced by any findings by Respondent No.1 in the impugned order under Section 264 of the Act.

(c) The AO shall consider the 26AS statement of assessee for AY 2017-18 and pass revised assessment order as rectified, suitably.

7. Before passing any order, the AO shall give personal hearing to Petitioner, a notice whereof shall communicated at-least five working days in advance.

8. Petition disposed.

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