IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4061 OF 2022

Sachin Panjabrao Ghavghave …**Petitioner**
Versus
Income Tax Officer, Ward 13(1), Pune & Ors. …**Respondents**

Mr. Nageswar Rao (through VC) with Mr. Parth, i/b. Lumiere Law Partners, for Petitioner.
Mr. Suresh Kumar, for Respondents-Revenue.

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

PC:-

1. The issue in this petition is very narrow.

2. Petitioner had earned certain income during a short stay in Austria when his employer had sent him there on some assignment. Petitioner states that he paid taxes in the sum of Rs.1,61,272/- in Austria and as per the India-Austria Double Taxation Avoidance Agreement, Petitioner should be given credit for this amount paid.

3. After Petitioner filed his return of income, he received an intimation under Section 143(1) of the Income Tax Act, 1961 ("**the Act**") dated 17th March 2020 in which the relief towards the tax paid in Austria of Rs.1,61,272/- was not granted. Petitioner, therefore, filed an application under Section 154 of the Act for rectification. The

same came to be rejected by an order communicated on 2nd June 2020 that is impugned in this petition without assigning any reason. The order simply states, "*on verification, it is seen there is no prima faice error in the order which you have sought to be rectified. Therefore, your application for rectification under Section 154 of the Act is rejected, for the following reasons (if any).*"

> "*Under Section 154 of Income Tax Act 1961, rectification application can be filed only to correct mistakes apparent from records. In this case, fresh claims of Relief/Withdrawal of relief is being done in the rectification application. This change is not a mistake apparent from records. Hence your rectification request cannot be processed.*"

In our view, this cannot be termed 'reason' because Petitioner's grievance of not having been given relief under Section 90/90A has not been dealt with.

4. In the circumstances, we hereby quash and set aside the impugned communication dated 2nd June 2020 and remand the matter to the Jurisdictional Assessing Officer ("**JAO**"), who shall consider Petitioner's application under Section 154 of the Act *de novo*. If Petitioner has paid the taxes amounting to Rs.1,61,272/- and in law Petitioner is entitled to credit for the same under the India-Austria Double Taxation Avoidance Agreement or the provisions of the Act, the same shall be considered and a reasoned order shall be passed. Mr. Rao states that the evidence of having paid this tax in Austria is annexed at Exhibit 'J' to the petition. The JAO shall consider this document and pass a reasoned order on merits dealing

with all submissions of Petitioner, in accordance with law. Before passing an order a personal hearing be granted to Petitioner, notice whereof shall be communicated at least five working days in advance. Mr. Rao states that it would help if the personal hearing is given on video conferencing. Ordered accordingly.

5. The order on the application under Section 154 of the Act shall be passed on or before 30th April 2024. After the personal hearing, if Petitioner wishes to file any written submission, the same to be filed within three working days of the conclusion of the personal hearing. If the JAO is going to rely on any judgment or order of any Court or Tribunal, a list thereof shall be made available along with the notice for personal hearing so that Petitioner will be able to deal with or distinguish the same.

6. Petition disposed. No order as to costs.

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