IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11043 OF 2024

Nirmalkumar Mulchand Puruswani ...Petitioner

Versus

Income Tax Officer, Ward 6(3), Pune & Ors. ...Respondents

AND
WRIT PETITION NO.11044 OF 2024

Dilipkumar Mulchand Puruswani ...Petitioner

Versus

Income Tax Officer, Ward 14(3), Pune & Ors. ...Respondents

Mr. Sanket S. Bora (through VC) a/w Mr. Ameya R. Das i/b. SPCM Legal for Petitioner in both the petitions.
Mr. Vikas T. Khanchandani for Respondents in WP/11043/2023.
Mr. Akhileshwar Sharma for Respondents in WP/11044/2023.

CORAM : M. S. Sonak & Jitendra Jain, JJ.

DATED : 13 January 2025

PC.:-

1. Heard learned counsel for the parties.

2. The learned counsel for the parties states that the issues raised in both petitions are similar, and therefore, they may be considered together.

3. In both these petitions, the ITAT, vide its order dated 31 July 2006, has set aside the impugned assessment orders and restored the matter to the AO for a *de-novo* decision as per the observations made in the ITAT orders. The AO was also directed to provide an adequate hearing opportunity to the assesses.

4. The record shows, and it is not even disputed, that the ITAT order dated 31 July 2006 was communicated to the department concerned. The complaint in these petitions is that though almost 16 years have elapsed, the concerned AO has not made any assessment orders according to the remand by the ITAT. The learned counsel for the Petitioner submits that the Petitioners have been deprived of their refund for almost 17 years, and such retentions of the amount by the department is arbitrary and violates constitutional provisions.

5. The Respondents have filed affidavits before us. Apart from trying to blame the Petitioner for not pursuing the matter diligently, there is an acknowledgement that case papers are not traceable since more than 10 years have elapsed.

6. In paragraphs 9 and 10 of the affidavit filed by Mary Robin Abraham, in Writ Petition No.11043 of 2024, it is stated as follows: -

> "9. The department has undergone restructuring in 2001 as well as 2014 wherein there was major upheaval of jurisdiction of Assessing Officers as well as CIT charges. The present jurisdiction of the Respondent 1 is assigned only from November, 2014. Prior to this period, the charge of Respondent 1 had jurisdiction over salary assesses. The Petitioner assessee had never raised this issue before any forum or before the Department till the year 2022 as Petitioner has not produced any document to prove any correspondence made on the issue prior to the year 2022. It is beyond comprehension as to why an assessee who has been regularly filing his return of income with tax payment and claiming of refund, wherever due, forgot his claim of refund for 16 long years.
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> 10. It is in public domain that the processing of return and keeping of record in the Respondent Income Tax department has undergone several changes. It has moved from manual record to computer record. A Software called ITD was initially introduced which was subsequently migrated when ITBA was adopted. Further, the PAN of assessee has been with different Jurisdictional AOs from 2002 to 2022, the details of which are annexed herewith and marked as EXHIBIT 'A'."

7. In our opinion, the above averments are quite vague. No details are provided about the officials responsible for the maintenance of records and if any action has taken place against such officials for failure to retain such records. The affidavit also does not explain why no orders for giving effect to the ITAT's remand orders were made within the prescribed period of limitation and what action is taken against the officials responsible for not making such orders. From the records, we find that these were such search cases. Accordingly, the departmental officials were expected to be diligent, and the matter was required to be diligently pursued. The ITAT remand order needed to be complied with within a reasonable period and, in any event, within the limitation period prescribed by the law. If this is not done, then the officials responsible for not doing this will have to be held accountable. Based on some vague statements about restructuring or major upheaval, no attempt can be made to avoid fixing responsibility.

8. Accordingly, we direct the Principal Commissioner of Income Tax, Pune, to investigate these matters and file affidavits explaining the status of the investigation. The affidavits must be filed and served by 6 February 2025.

9. The learned counsel for the Respondents agrees to communicate and authenticate the copy of this order to the Principal Commissioner of Income Tax, Pune.

10. List the petitions on 10 February 2025.

(Jitendra S. Jain, J.) **(M. S. Sonak, J.)**

Signed by: Sayyed Saeed Ali
Designation: PA To Honourable Judge
Date: 15/01/2025 14:09:07