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

WRIT PETITION NO.5318 OF 2024

Laqshya Media Limited ...Petitioner

Versus

Assistant Commissioner of Income-tax,
Circle 2(2)(1), Mumbai & Ors. ...Respondents

Mr. Ravi Sawana a/w Ms. Neha Sharma and Ms. Priyanshi Chokshi i/b. Mr. Sriram Sridharan for the Petitioner.
Mr. N. C. Mohanty for the Respondents.

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

DATED : 17 February 2025

ORAL JUDGMENT (Per M. S. Sonak, J.):-

1. Heard learned counsel for the parties.

2. Rule. The Rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.

3. The Petitioner had sought for a writ of mandamus to direct the first respondent to issue a refund of Rs.7,69,17,030/- due for the assessment year 2023-2024 along with interest under Section 244A(1) of the Income Tax Act, 1961 ("IT Act") till the date of grant of refund.

4. Learned counsel for the Petitioner, based on instructions, however, states that the major portion of the refund is now granted. Therefore, the Petitioner's grievance is now restricted to the adjustment of the refundable amount of Rs.16,81,893/- which was adjusted towards the penalty order allegedly dated 14 March 2022. This adjustment was made by order dated 16 February 2024.

5. Mr. Sawana, learned counsel for the Petitioner, submitted that during Section 245 proceedings, the Petitioner was granted an opportunity to show cause as to why adjustment should not be made against the demand raised in the penalty order dated 14 March 2022. He submitted that the Petitioner responded by pointing out that no such order was ever served upon the Petitioner, and, therefore, there was no question of any adjustment. The Petitioner also requested for furnishing the copy of such order, if any.

6. Mr. Sawana submits that without furnishing any copy, the impugned adjustment was made and, therefore, the Petitioner instituted this petition. In this Court, the Petitioner was given a copy of the penalty order dated 14 March 2022. From the perusal of this copy and also the reply filed on behalf of the Respondents, it is apparent that this penalty was digitally signed on 22 May 2024.

7. Mr. Sawana, therefore, submitted that based on an order digitally signed on 22 May 2024, there was no question of issuing the order dated 16 February 2024 and making an adjustment of the otherwise refundable amount of Rs.16,81,893/-. He submits that such adjustment is *ex facie* without jurisdiction and should be interfered with.

8. Mr. Mohanty submits that the penalty order is dated 14 March 2022. He submitted that the Petitioner has not challenged such an order. Therefore, he submitted that the adjustment made after due compliance with the procedure prescribed under Section 245 may not be interfered with.

9. We have considered the rival contentions and perused the material on record.

10. We do not intend to interfere with the penalty order dated 14 March 2022, which was digitally signed on 22 May 2024. The Petitioner possesses an alternative and effective remedy to challenge the same.

11. However, we agree with Mr. Sawana, learned counsel for the Petitioner, that based upon an order which was digitally signed on 22 May 2024, the Respondents were not entitled to issue the order dated 16 February 2024 adjusting an amount of Rs.16,81,893/- against the alleged dues arising out of this order which was digitally signed only thereafter i.e. on 22 May 2024. As of 16 February 2024, we cannot reasonably hold that any amount was due and payable by the Petitioner which could have been adjusted from out of the refunds that had to be made to the Petitioner.

12. On this short ground, we set aside the order dated 16 February 2024 and direct the Respondents to refund Rs.16,81,893/— to the Petitioner within four weeks from today. If the amount is not refunded within four weeks from today, it will carry interest as provided under the law. This shall be without prejudice to any action under the Contempt of Courts Act, 1971.

13. If so advised, the petitioner is free to challenge the penalty order digitally signed on 22 May 2024 and communicated to the Petitioner in these proceedings following law. All parties' contentions in this regard are kept open to be decided by the appellate authority in the first instance.

14. The Rule is made absolute in the above terms without any cost order. All concerned are to act on an authenticated copy of this order.

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

Signed by: Sayyed Saeed Ali
Designation: PA To Honourable Judge
Date: 18/02/2025 16:16:37