

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

WRIT PETITION NO.4748 OF 2022

Kusharaj Madhav Bhandary Mumbai ... Petitioner.
Versus
Income-tax Officer Ward 17(2)(1),
Mumbai
And Others ... Respondents

* * *

Mr. Rahul Sarada i/b Ms. Neelam Jadhav for the Petitioner.
Ms. Sushma Nagaraj for the Respondents.

* * *

**CORAM : DHIRAJ SINGH THAKUR &
VALMIKI SA MENEZES, JJ.**

DATE : 25 NOVEMBER 2022

P.C.

. It is the case of the Petitioner that the Order of the assessment was passed on 30 March 2022, in which a demand was raised against the Petitioner. The said Order of assessment was not challenged by the Petitioner. With a view to seek benefit of immunity from prosecution & penalty under Section 270AA of the Income Tax Act, 1961 ("the Act"), the Petitioner is otherwise required to fulfill the condition that the appeal was preferred against the Order of assessment and tax and interest has been paid as per the Order of assessment. In accordance with the provision of Section 270AA of the Act, it is stated that the application has to be made within one month from the end of the month of receipt of the Order of assessment. In this case, it expired on 30 April 2022.

2 Learned Counsel for the Petitioner states that the Petitioner filed an application on 27 April 2022 seeking rectification of the Order of the assessment in terms of Section 154 of the Act inasmuch as the assessing officer had failed to give credit of Rs.25,00,000/- to the Petitioner, which is deposited by way of TDS. It is stated that in the meantime, the Order of penalty has been passed on 27 September 2022. It is stated that had the application for rectification filed by the Petitioner been disposed of within time, it would have enabled the Petitioner to avail benefit of immunity from prosecution & penalty in terms of the Section mentioned hereinabove.

3 Issue notice. Service waived by Ms. Sushma Nagaraj, learned Counsel for the Respondents. Objections be filed within six weeks.

4 In the meantime, it is ordered that further proceedings shall not be initiated pursuant to issuance of the Order of penalty dated 27 September 2022. The Respondents are directed to pass an appropriate Order on the application of the Petitioner for rectification dated 11 April 2022 filed on 27 September 2022.

5 List on 27 January 2023.

(VALMIKI SA MENEZES, J.) (DHIRAJ SINGH THAKUR, J.)

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WRIT PETITION NO. 4748 OF 2022

Kusharaj Madhav Bhandary

... Petitioner

Versus

1) Income-tax Officer,
Ward 17(2)(1) & anr.

... Respondents

Mr.Rahul Sarada i/b Ms.Neelam Jadhav, Advocate for petitioner.

CORAM : DHIRAJ SINGH THAKUR &
VALMIKI SA MENEZES, JJ.

DATE : 5th DECEMBER , 2022.

P C :

1. Not on Board. Mentioned by way of Praecipe, dated 5th December 2022 for Speaking to the Minutes of the order dated 25th November 2022.

2. In the order, following corrections be carried out :

(i) In paragraph No.1, in seventh line, the words “*was preferred*” is replaced with “*was not preferred*”.

(ii) In paragraph No.4, in last line the word “*September*” is corrected to read as “*April*”.

3. Rest of the order remains unaltered.
4. Corrections be incorporated in the original order.
5. The Praecipe is disposed of.

[VALMIKI SA MENEZES, J.]

[DHIRAJ SINGH THAKUR, J.]