



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13185 OF 2024

Mahesh Mathuradas Ganatra

...Petitioner

Versus

Centralised Processing Center & Ors.

...Respondents

Mr. Ruturaj H. Gurjar for Petitioner.

Mr. Akhileshwar Sharma a/w Ms. Shradha Worlikar for Respondents.

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

DATED : 24 February 2025

ORAL JUDGMENT (Per Jitendra Jain, 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. This petition is filed challenging the recovery of more than 20% of the tax demand for assessment year 2015-2016 from the Petitioner.
4. The Petitioner is an individual and has filed his return of income on 28 September 2015 returning income of Rs.56,65,660/-. The said return of income was selected for scrutiny assessment and on 20 December 2017 an assessment order came to be passed under Section 143(3) of the Income Tax Act, 1961 ("the Act") assessing income at Rs.1,11,85,520/- and a demand of Rs.37,91,550/- was made.
5. The Petitioner filed stay application for assessment year 2015-2016 before the Assessing Officer requesting for stay of the demand raised vide order dated 20 December 2017. It is important to note that

prior to making this application for stay, the Petitioner voluntarily had already deposited 20% of the demand which worked out to Rs.7,58,310/-.

6. On 6 October 2022, an intimation under Section 143(1) of the Act was issued processing return for assessment year 2022-2023 and the refund of assessment year 2022-2023 amounting to Rs.6,05,030/- was adjusted against the demand for assessment year 2015-2016.

7. The assessee's stay application for assessment year 2015-2016 dated 29 January 2018 was not decided for a period of almost for more than six years and on 17 April 2024 an order on the stay application came to be passed. In the said order, the Assessing Officer admitted that 20% of the total demand has already been paid by the assessee and, therefore, relying upon Instruction No.1914, the stay was granted for the balance amount of Rs.30,33,240/-. The stay was granted subject to the conditions that the Petitioner shall co-operate in the early disposal of the appeal and further the Assessing Officer reserved his right to review this order after expiry of six months.

8. It is on the above backdrop that the Petitioner has approached this Court under Article 226 of the Constitution of India, after addressing letter dated 14 November 2023, whereby the Petitioner has objected to the adjustment of refund for assessment year 2022-2023 against the demand of assessment year 2015-2016 on the ground that he has already paid 20% of the demand for assessment year 2015-2016 and, therefore, the refund adjustment was not in accordance with law.

9. Mr. Gurjar, learned counsel for the Petitioner, submitted that the revenue has recovered more than 20% of the demand for which the stay has been granted by the Assessing Officer. He submits that the Petitioner voluntarily made payment of 20% amounting to

Rs.7,58,310/- on 25 January 2018 even before the stay application was filed on 29 January 2018. In spite of such a payment, the revenue adjusted the refund of assessment year 2022-2023 on 6 October 2022 amounting Rs.6,05,030/-. Therefore, the department has recovered excess of Rs.6,05,030/- and therefore, the revenue should be directed to refund the said amount being contrary to their own stay order dated 17 April 2024.

10. Mr. Sharma, learned counsel for the Respondents, defended the action of the Respondents and submitted that the refund for assessment year 2022-2023 was adjusted prior to the stay order being passed for assessment year 2015-2016 and there is no provision in the system to give a credit of Rs.6,05,030/-. He has relied upon the affidavit-in-reply filed by one Mr. Sanjay Kamble dated 24 February 2025.

11. We have heard learned counsel for the Petitioner and Respondents.

12. At the outset, we wish to deprecate the practice of the Respondents in not adjudicating the stay application for more than six years. The stay application was filed on 29 January 2018 for assessment year 2015-2016 and the stay order was passed on 17 April 2024. It is almost after a period of more than six years. If the revenue is keen on recovery of the 20% of the demand then it is incumbent upon the Assessing Officer to dispose of the stay application as early as possible so that the interest of the revenue is protected. By delaying the adjudication of the stay application, it is the interest of the revenue which will be affected and therefore, the delay in disposing the stay application after almost a period of six years was not justified.

13. In any case, in the present matter, the Petitioner himself voluntarily even before the application for stay was filed deposited 20% of the demand of Rs.7,58,310/- and thereafter made a request for the stay of the balance demand. In such scenario, when an assessee voluntarily deposits 20% even before the stay application is decided and which is in accordance with Instruction No.1914 of the revenue, the least which could have been expected from the Respondents is not to adjust the refund for assessment year 2022-2023 against the demand for assessment year 2015-2016 although the delay in adjudication of the stay order is not attributable to the Petitioner.

14. The Respondents cannot take the advantage of their own delay in disposing the stay application. The effect of adjustment of refund for assessment year 2022-2023 while processing the return on 6 October 2022 would be that the Petitioner has made a payment of Rs.13,63,340/- against the demand for assessment year 2015-2016 and the said amount of Rs.13,63,340/- is in excess of 20% of the demand which the Respondents have directed the Petitioner to pay vide order dated 17 April 2024.

15. In our view, when this was pointed out even before the stay order was passed by the Petitioner vide letter dated 14 November 2023, the Respondents ought to have refunded the said amount of Rs.6,05,030/- either on the Petitioner making application dated 14 November 2023 or at least while passing the stay order on 17 April 2024. Non consideration of this adjustment while arriving at the 20% outstanding demand for assessment year 2015-2016 is unjustified moreso in the present case when the assessee himself voluntarily made a payment of 20% much before filing of the stay application for assessment year 2015-2016.

16. It is also important to note that the appeal of an individual assessee is pending before the first appellate authority i.e. Commissioner of Income Tax (Appeal) since 2018 and more than six years there has been no hearing by the Commissioner (Appeal). Even delay in disposing the appeal without any justifiable cause would be against the interest of the revenue. In this connection, it is important to note that provision of Section 250(6A) of the Act which states that every appeal filed before the first appellate authority where it is possible may be heard and decided within a period of one year from the end of the financial year in which such appeal is filed. This provision was introduced with effect from 1 June 1999 and although it is a directory provision, in the absence of any justifiable reason for not disposing the appeal filed before the CIT (A) for a period of more than six years same would run contrary to the objective for which Section 250(6A) has been introduced. We hope that the Commissioner (Appeal) would dispose of this appeal as expeditiously as possible.

17. In view of above, we pass the following order :-

ORDER

- (i) Respondent to refund sum of Rs.6,05,030/- being excess adjustment made against the demand for assessment year 2015-2016 within a period of four weeks from the date of uploading of the present order.
- (ii) Petitioner to make an application to the first appellate authority for taking up his appeal for hearing and if such an application is made, the Commissioner (Appeal) would hear and decide the appeal keeping in mind the provisions of Section 250(6A) of the Act.

- (iii) The concerned Commissioner (Appeal) to dispose the Petitioner's appeal as expeditiously as possible preferably by 31 May 2025.
- (iv) Respondent No.5 to investigate the reasons for the delay by the CIT (Appeal) in disposing of the appeal which is pending since January 2018. After completing the enquiry / investigation steps to be taken for addressing the timely disposal of the appeal keeping in mind the objective of Section 250(6A).

18. The Rule is made absolute in the above terms. No order as to costs.

(Jitendra Jain, J.)

(M. S. Sonak, J.)