IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6726 of 2013

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE M.R. SHAH

and

HONOURABLE MS JUSTICE SONIA GOKANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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VAGHJIBHAI S BISHNOI....Petitioner(s)

Versus

INCOME TAX OFFICER & 1....Respondent(s)

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Appearance:

Mr. SP MAJMUDAR, ADVOCATE for the Petitioner(s) No. 1

Ms. PAURAMI B SHETH, ADVOCATE for the Respondent(s) No. 2

NOTICE SERVED for the Respondent(s) No. 1

SERVED BY RPAD - (N) for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE M.R. SHAH
and
HONOURABLE Ms. JUSTICE SONIA GOKANI

9th July 2013

ORAL JUDGMENT (PER : HONOURABLE Ms. JUSTICE SONIA GOKANI)

1. **Rule**. Learned advocate Ms. Paurami B. Sheth appears and waives service of rule on behalf of the respondent no.2.

2. This *writ* petition under *Article* 226 of the Constitution of India is preferred for seeking refund of Rs. 2,11,415/=, with the following factual background.

3. The petitioner is an assessee who filed his return of income as required under section 139 of the Income-tax Act, 1961 ["**Act**" hereinafter] for the Assessment Year 2010-11. Such tax return was filed electronically declaring his total income at Rs. 8,61,077/= [*rupees eighteen lacs sixty one thousand seventy seven*]. As per the entire computation, the refund entitlement the petitioner claimed, was to the tune of Rs. 2,11,415/= on adjustment of Tax deducted at source {"**TDS**" for short}. It is averred that the respondent no.1 inadvertently missed out giving credit of the TDS of the amount of Rs. 3,78,608/= against the tax payable at Rs. 1,67,193 [*rupees one lac sixty seven thousand one hundred ninty three*].

3.1 An application for rectification under section 154 of the Act was preferred *vide* communications dated 8th July 2011 and 12th September 2011 addressed to the respondent no.2, the assessee pointed out this mistake and also requested giving of credit of TDS. However, since the request has not been accorded to and credit is not given as requested for, and, no reply to such communications has been received by the present petitioner, the present Special Civil Application is filed, *inter alia*, praying for a direction to the

respondents-authorities to forthwith refund the amount of Rs. 2,11,415/= to the petitioner; being the refund due to the petitioner for A.Y 2010-11, alongwith interest at an appropriate rate.

4. In response to the issuance of the notice, the respondent no.2 filed affidavit-in-reply, *inter alia,* admitting filing of e-return by the petitioner for the A.Y 2010-11 on 20th September 2010 declaring his total income at Rs. 8,61,077/= and claiming refund of Rs. 2,11,415/=; after adjusting TDS of Rs. 3,78,608/= against tax payable of Rs. 1,67,193/=. It is also contended that the return of the petitioner assessee was processed under section 143 (1) of the Act on 17th March 2011 by the Centralized Processing Centre ["**CPC**" for short], Bangalore. However, such adjustment of TDS was not granted and the tax payable was determined at Rs. 1,93,429/=; which included both – Tax and the interest, being a sum of Rs. 1,67,193/= and Rs. 26,235/= respectively. It is also contended that the petitioner failed to furnish all the relevant information as was required under Section 139 (1) of the Act in the e-return, and therefore, the adjustment of TDS was not allowed. A stand is further taken by the respondent no. 2 *inter alia* that he has not been transferred details of the e-return by the respondent no.1-CPC, Bangalore, and therefore, the respondent no. 2 is not authorized to accede to any request of the assessee. It is further admitted that the rectification application preferred by the petitioner was attended to by the CPC, Bangalore

on 27th October 2011 by passing an order under section 154 of the Act, wherein the respondent no.2 observed as follow :-

> **"During the processing of the return under section 143 (1), tax payments had not matched as proper details like BSR Code, Date of Deposit, Challan sequence number, Exact amount paid in case of multiple payments, Details of each payments to be furnished has not been furnished by the assessee, however, during rectification, the same has not been corrected by the assessee."**

5. Affidavit-in-rejoinder on behalf of the petitioner is preferred where he has denied all the contentions raised in the affidavit-in-reply. It is empathetically urged that all relevant details for claiming the TDS amount were submitted to the respondents authorities and all forms; including Form 16A were also annexed with the application and the respondents were aware that the TDS credit was required to be given and yet, for the reasons best known to them, the said mistake has not been corrected till the date. It is further urged that the jurisdictional Assessing Officer is the respondent no.2, however, on account of non-transfer of the details by the CPC, Bangalore [the respondent no.1] to the respondent no.2, the assessee has not been given his due by way of refund. It is further urged that the system is on-line and all details of TDS are available on the net. The TDS has been deducted at source by the public limited companies/government companies, and therefore also,

such deductions shall have to be regarded. It is further contended that the complete details, which match with the payments; with BSR code; deposit challans, etc. have been furnished.

6. It needs to be noted that the respondent no. 1 has neither filed any affidavit-in-reply nor furnished any document to controvert the facts; although duly served. For the respondent no.2, Ms. Paurami Sheth appeared and advanced her submissions.

7. Learned advocate Mr. Majmudar appearing for the petitioner has fervently made his submissions along the line of the petition and insisted for grant of refund. He also further pointed out from the documents furnished by the respondent no.2 that his entitlement for refund is to the tune of Rs. 4,00,647=36p., however, what all he has asked for is Rs. 2.11 lacs [*rounded off*]. He argued that in wake of filing of the e-return, all details are already on the net, therefore, the respondents could have verified all the aspects and given refund to the petitioner. He argued that even due to inadvertence, this adjustment of TDS was not given, after the rectification application was made before the respondent no.1, he ought to have responded to the same. He further argued that lack of inter-departmental coordination has resulted into non-grant of refund to the petitioner in time. It is empathetically refuted that requisite documents were not furnished. He also contended that despite extensive

computerization in the Income-tax Department, no fruitful benefits are available to the assessee.

8. Learned advocate Ms. Paurami Sheth appearing for the respondent no.2 has argued that the respondent no.2 is the jurisdictional authority which cannot act unless the CPC-Bangalore transfers the details. She further argued that in computation; if at all error is committed, unless the documents are transferred to the respondent no.2, he would not be in a position to act and grant refund, as requested for by the petitioner.

9. On thus hearing both the sides and on thorough examination of the material on record, at the outset, we would like to note that Section 139 of the Act provides for filing of return, process of which is to be done u/s. 143 (1) of the Act. It would be profitable to reproduce Section 143 (1) of the Act, which reads thus : -

> "**143 (1)** Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely :-
>
> (a) the total income or loss shall be computed after making the following adjustments, namely :-
>
> (i) any arithmetical error in the return; or
> (ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;

(b) the tax and interest, if any, shall be computed on the basis of the total income computed under clause (a);

(c) the sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of the tax and interest, if any, computed under clause (b) by any tax deducted at source, any tax collected at source, any advance tax paid, any relief allowable under an agreement under section 90 or section 90A, or any relief allowable under section 91, any rebate allowable under Part-A of Chapter VIII, any tax paid on self-assessment and any amount paid otherwise by way of tax or interest;

(d) an intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to, the assessee under clause (c) ; and

(e) the amount of refund due to the assessee in pursuance of the determination under clause (c) shall be granted to the assessee.

10. Section 139 of the Act requires every person, whose total income exceeds the maximum amount which is not chargeable to income-tax, to file the return on or before the due date. Such return is required to be processed in the manner prescribed under section 143 (1) of the Act. The total income or loss requires to be computed after making certain adjustments – one of which is taking into account the arithmetical error in the return.

11. On having so done, an intimation is required to be prepared or

generated and sent to the assessee specifying the sum determined to be either paid by him, or amount of refund due to the assessee. In absence of any arithmetical error or any mistake in the return, on following the computation; as provided under the law, it is expected that the respondent would need to grant refund under section 143 (1) of the Act; as claimed in the return of income.

12. The fact is not in dispute that in the case on hand, the return has been filed electronically for the A.Y 2010-11 wherein, the petitioner has made a claim for deduction of TDS as per Form 26AS under section 203AA of the Act. This is also visible from the website of the Department. The total amount of TDS deducted is shown in the Form 26AS is Rs. 4,00647=36p.. This amount is more than what has been claimed in the return of income of the petitioner. The petitioner has also explained that he had earned total freight income of Rs. 1,23,88,721/=. The audit report declares his total freight income of Rs. 75,91,259/=; after deducting freight expenses of Rs. 47,97,462/=. Thus, the freight income shown by the petitioner in the Profit & Loss Account is net-freight income – after deducting the freight expenses of Rs. 47,97,462/= from the gross income. According to the petitioner, this method of deducting the expenses from the total freight income is being followed by him consistently for all the years, and therefore, this issue is aptly and sufficiently answered and

does not appear to have the bearing on the claim of the petitioner.

12.1 On examination of the material on record, it appears that Form 26AS, available on the net, clearly reflects different dates on which payment had been credit and the total tax deducted at source by various companies viz., Messrs. Indian Oil Corporation Limited; GAIL India Limited; Futura Travels Limited; Hindustan Petroleum Corporation Limited, etc. It is apparent from the communication in the form of an Order dated 17th March 2011 issued by the respondent no. 1 that he has not been given credit of TDS of Rs. 3,78,608/= , as is visible from the computation made under section 143 (1) of the Act. Thus, it can be seen that on one hand, in the details available with the Department from Form 26AS, the amount of TDS is to the tune of Rs. 4,00,647=36p. and in the return filed by the petitioner, the claim made by him is to the tune of Rs. 3,78,608/=. However, while passing the final order, there is a complete absence of taking into account the said amount of TDS in the computation as has been accepted by the Department as well. The petitioner is unable to explain as to why he has claimed less amount though the total amount of TDS shown in the department record is Rs. 4,00,647=36p. and the TDS income claimed is Rs. 3,78,608/=.

13. Be that as it may, the respondents have not succeeded in bringing anything on the record to indicate any default on the part of the petitioner to

furnish any of the documents that have been directed. When the only claim which appears to have been missed out in computation is the TDS amount deducted by various government companies, while detailing with the petitioner and when such details are available on-line in Form 26AS, and when these details to the Court have been provided by the learned counsel appearing for the Department, there is no reason why there should be absence of such amount in the final computation of the e-return of the petitioner.

14. Again, when this came to the knowledge of the petitioner; on having received communication in the form of an order dated 17th March 2011, a rectification application appears to have been made which the respondent no.1-CPC, Bangalore attended to and passed an order dated 27th October 2011. One glaring aspect that needs to be noted is that the respondent no.2 has reflected rejection of rectification application by way of reproducing a part of the order. However, the respondent no.1 has blissfully chosen not to respond to the notice of this Court, nor order on rectification application is brought on the record. We are not convinced from such reproduction as to in which manner assessee failed in furnishing necessary details which would have entitled the Department to discard the total amount of TDS, while computing the return of the petitioner, when all the details of TDS are available with the Department. What all it needs to do is to compute, as required under section 143 (1) of the

Act. Instead of that, the respondents have adamantly continued to take a stand of this being a failure on the part of the petitioner to comply with the directions. We are not impressed with such a stand. On the contrary, we are of the firm opinion that computerization in every Department is objected with a view to facilitate easy access to the assessee and make the system more viable and transparent. In the event of any shortcoming of software programme or any genuine mistake, the Department is expected to respond to such inadvertence spontaneously by rectifying the mistake and give corresponding relief to the assessee. Instead of that, even when it is being brought to the notice of the Department by the assessee, by a rectification application and subsequent communication, not only it has chosen not to rectify the mistake, but, the lack of inter departmental coordination has driven the assessee to this Court for getting his legitimate due. This attitude for sure does not find favour with the Court, as more responsive and litigant centric system is expected; particularly in the era of computerization. Tax payers friendly regime is promised in this electronic age. For want of necessary coordination between the two departments, the assessee cannot be expected to be sent from pillar to the post.

14.1 Thus, from the discussion above, it can be very well said that the respondent no. 2 has failed to perform its duty as provided under section 154 of the Act. When a glaring mistake was pointed out to the authority, it ought to

have amended the order of assessment by exercising powers under section 154 of the Act, which in the present case, the authority failed to exercise and consequently, the petitioner was compelled to approach this Court by way of the present petition.

15. We could not resist ourselves from taking note of details provided in the official website of Income-tax Department which reveals the extension of computerization in the department so far and their vision for the same in this field.

> "With a view to improve the efficiency and effectiveness of Direct Taxes administration and to create a database on its various aspects, a Comprehensive Computerization programme was approved by the Government in October 1993. In accordance with the programme, computerization was taken up on a three-tier system. In the apex level, a National Computer Centre [NCC] having large computers to maintain data base and to execute processing work of a global nature was envisaged. At the second level, 36 Regional Computer Centres [RCCs] were to be established across the country equipped with large computers to maintain regional databases and to cater to regional processing needs. All the RCCs were to be connected to the National Computerization Centre through high speed data communication lines. At the third level, computers were to be installed in the rooms of all the Assessing Officers and connected with the respective Regional Computer Center for data/information exchange, in a phased manner. Accordingly,

in the first phase, Delhi, Mumbai and Chennai City regions were taken up and provided with state of art hardware and software connected with RCC, through inter-city and intra-city linkages. After stabilizing of the computer systems in the 3 RCCs, computerization of 33 other centres covering the rest of the country was taken up in the second phase.

The Director General of Income Tax [Systems], {DIT [S]}, New Delhi was made the main nodal authority for overall planning and implementation of the computerization programme; including procurement of hardware and software and development/installation of application software. In addition, at each RCC, the Chief Commissioner of Income Tax [CCIT] was required to monitor and co-ordinate with the DIT [S]. He would be assisted by CIT [Computer Operations] who would monitor the functioning of the RCC.

The main objectives of the computerization programme, as approved by the Committee on Non-Plan Expenditure [CNE], were – (a) to improve the efficiency and effectiveness of tax administration; (b) to ensure timely availability and utilization of information; (c) to reduce compliance burden on honest tax payers; (d) to enhance equitable treatment of tax payers of income-tax and procedures; (e) to ensure better enforcement of tax laws; (f) to provide management with reliable and accurate information in time so as to assist them in tax planning and legislation and also in decision making; (g) to broaden th tax base; and (h) to keep the cost of administration at an acceptable level over a period of time."

15.1 Thus, computerization of the Income Tax Department when has

undergone the exercise of '*a comprehensive business process re-engineering*', it is expected that Department's wish to herald '*Tax payers friendly regime*' becomes the reality. A '*paradigm shift is programmed*' as tax payers' population has been growing exponentially, ushering all the imperative changes and modernization of administration.

15.2 If the Centralized Processing Center meant for return processing, accounts, refund, storage of data etc. adds to the difficulties of the Tax payers, due to lack of distribution of work between back office and front office, and that too, after having been pointed out the actual error, a serious re-look is expected.

16. Resultantly, this petition succeeds. Respondents are directed to take into account the total sum of TDS as is reflected in Form 26AS and after computing such TDS amount, issue refund in the name of the petitioner. As mentioned hereinabove, the sum claimed by the petitioner towards TDS is Rs. 3,78,608/=, however, in Form 26AS, the amount of TDS is Rs. 4,00,064=36 paise. As the petitioner has chosen not to make any amendment in the petitioner, at present, while allowing his refund claim of Rs. 2,11,415/=; as requested for by the petitioner, he is also being permitted to make additional claim of refund, which shall be considered by the respondents in accordance with law and permit him more refund; if he is entitled to. The exercise of granting refund to

the petitioner must be completed *within* four weeks from the date of receipt of this order. Rule made absolute accordingly. In the facts and circumstances of the case, we would have imposed the costs, however, as Shri Majmudar, learned advocate appearing on behalf of the petitioner has not insisted for costs, there shall be no order as to costs.

{M.R Shah, J.}

{Ms. Sonia Gokani, J.}

*Prakash**