



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.27193 OF 2023

Naresh Manakchand Jain ...Petitioner

Versus

The Registrar,
Income-tax Appellate Tribunal ...Respondent

Mr. Dharan Gandhi with Ms Aanchal Vyas for Petitioner.
Mr. Akhileshwar Sharma for Respondent-Revenue.

**CORAM: K. R. SHRIRAM &
NEELA GOKHALE, JJ.**
DATED: 18th October 2023

PC:-

1. The prayer in the Petition is primarily to quash and set aside the order dated 31st August 2023 passed by the Income-tax Appellate Tribunal (“**ITAT**”) under Section 254(1) of the Income-tax Act, 1961 (“**Act**”) and to remand the matter to the ITAT for fresh consideration of the appeals bearing ITA Nos. 1945 of 2023 and 1946 of 2023.

2. Petitioner had filed aforesaid two appeals before the ITAT against an order dated 27th March 2023 that was passed by the Commissioner of Income-tax (Appeals) [**CIT(A)**]. Petitioner received a notice of hearing dated 3rd August 2023 informing him that both the appeals were fixed for hearing on 29th August 2023. It is stated in the Petition that on 10th August 2023 this notice was forwarded by Petitioner to his Chartered Accountant. It is further stated in the Petition that Petitioner was, however, unaware that the Chartered
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Accountant was unwell and had undergone a surgery on 3rd August 2023 and the Chartered Accountant had been advised complete rest. The office of the Chartered Accountant also did not bring to the notice of the Chartered Accountant, and, therefore, Petitioner was unrepresented on 29th August 2023.

3. The ITAT proceeded to hear the matter in the absence of Petitioner and after hearing only the departmental representative passed the order pronounced on 31st August 2023, which is impugned in this Petition.

4. On 7th October 2023, an order came to be passed by this Court staying the operation of the impugned order. Mr. Sharma, who is appearing for Respondents states that if the Court feels the matter is to be remanded, the Court may in its wisdom pass such order as it deems fit.

5. We have considered the impugned order with the assistance of Mr. Gandhi and Mr. Sharma and we find that very strong observations have been made against Petitioner. Apart from these observations, directions have been passed to the Assessing Officer to complete the directions given therein, within 90 days of the receipt of the order. Those directions are contained in paragraph 17(i) to (viii).

6. In our view, these directions could not and in any case should not have been passed because this was an appeal that was filed by Shivgan

assessee and not an appeal that was filed by the Revenue.

7. Having considered the impugned order and the averments made in the Petition, in our opinion, the order passed in the absence of Petitioner has to be quashed and set aside and the matter should be remanded for *de-novo* consideration.

Ordered accordingly.

8. It will be apposite to re-produce the following paragraph from the judgment of this Court in ***Indira Balakrishna, Manager of Estate of Balakrishna Purshottam Purani v. CIT***¹. It reads as under:

"Now, it is never desirable for any Judge to express an opinion which is not necessary for the decision of a case; even so judges, and some of them very eminent judges, have indulged from time to time in obiters. But the only result of their doing so is possibly to encumber law reports and the giving expression to these obiters has not resulted in any prejudice to any party. But in the case of the Tribunal the position is entirely different. Every expression of opinion by them is likely seriously to prejudice the assessee. In this very case because they took the view that the Appellate Assistant Commissioner was in error in considering that the income from property fell under section 9(3), the Income-tax Officer has, as pointed out by Mr. Palkhivala, issued a notice against the assessee under section 34(1)(b). The Tribunal being the highest authority under the Income-tax Act, the Income-tax Officer is bound to respect any opinion expressed by it, and if it says that an assessee has been under-assessed or there has been a failure to assess properly, the Income-tax Officer is bound to take action under section 34, and that is exactly what has happened in this case. Therefore, in our opinion, with respect to the Tribunal, it should be very careful in giving findings and in expressing opinions. It must try and confine itself to the question that really arises in the appeal before it and not travel outside the ambit of its jurisdiction and express opinions prejudicial to the assessee which may help the Department in taking proceedings against the assessee. It may be said that if the Income-tax Officer is in error in issuing the notice under section 34 or that the view expressed by the Tribunal was not correct, the assessee would always have his remedy. But that is not the point. The assessee is harassed by a notice issued against him under section 34 and he has got to run the gamut of several income-

¹ [1956] 30 ITR 320

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tax authorities before ultimately he gets justice, and all this arises because the Tribunal overlooks its own responsible position and the serious consequences of expressing opinions which do not really arise for the decision of the appeal before it." (emphasis supplied)

9. The Tribunal that would hear the matter afresh shall be uninfluenced by the impugned order in this Petition. We shall also hasten to add that we have not made any observations on the merits of Petitioner's appeals that are pending before the ITAT.
10. Petition disposed accordingly.
11. All rights and contentions of the parties are kept open.

(NEELA GOKHALE, J.)

(K. R. SHRIRAM, J.)