* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 09 July 2024**
Judgment pronounced on: 13 August 2024

\+ W.P.(C) 11284/2023 & CM APPL. 43894/2023 (Stay)

RAMESH CHAWLA (HUF) .....Petitioner

Through: Mr. Vivek Bansal, Advocate

versus

INCOME TAX OFFICER, WARD 45(1), NEW DELHI & ORS. .....Respondents

Through: Mr. Puneet Rai, SSC with Mr. Ashvini Kumar, Mr. Rishabh Nangia, SCs and Mr. Nikhil Jain, Advocate

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

RAVINDER DUDEJA, J.

1. Petitioner has filed the present Writ Petition under Articles 226 & 227 of the Constitution of India, praying for the following reliefs:

> "(a) a writ of and / or order and / or directions in the nature of Mandamus for issuing refund of INR 71,54,104/- (including interest under section 244A of the Act amounting to INR 33,81,092/- computed till August, 2023) along with applicable interest under section 244A of the Act due to the Petitioner for AY 2004-05 or any other appropriate writ, order or direction;
> (b) issue a writ of and/or order and or directions in the nature of certiorari or mandamus or order or direction for quashing of the impugned notices dated 21.07.2023, dated 09.08.2023 and the recent notice dated 16.08.2023."

2. The admitted facts as made out are that petitioner filed return of income under Section 139(1) of the Income Tax Act, 1961 ["**Act**"] for the subject Assessment Year ["**AY**"] 2004-05, declaring total income

INR 45000/-. The return was processed under Section 143(1) of the Act and the same was accepted.

3. In the year 2008, petitioner was served with notice issued under Section 148 of the Act on the basis of information received that the petitioner has received gifts of Rs. 1 crore from Sh. Harish Kumar.

4. Respondent No. 1 concluded the reassessment proceedings vide order dated 29.12.2008 passed under Section 143(3)/147 of the Act, assessing the petitioner at Rs. 1,00,45,000/- by making addition of Rs. 1 crore holding that the gifts received by the petitioner were not genuine.

5. Feeling aggrieved, petitioner filed an appeal before the Commissioner of Income Tax (Appeals) [**"CIT(A)"**] but the appeal was dismissed vide order dated 17.02.2010, thereby confirming the aforesaid addition.

6. Petitioner, then filed an appeal before the Income Tax Appellate Tribunal [**"Tribunal"**]. The Tribunal vide order dated 28.09.2012, remitted the matter to the file of the Assessing Officer [**"AO"**].

7. Pursuant to the directions passed by the Tribunal, petitioner was again assessed and respondent No. 1 vide order dated 26.03.2014 passed under Section 254/143(3) of the Act again made the same additions on protective basis, raising a tax demand of Rs. 72,29,982/-.

8. Petitioner challenged the Assessment Order before CIT(A). However, his appeal was dismissed, holding that the addition of Rs. 1 crore made by the AO under Section 68 of the Act on protective basis was justified.

9. Aggrieved with the order of CIT(A), petitioner preferred an appeal before the Tribunal. The Tribunal restored the matter to the file of the AO with certain findings and directions. The Tribunal vide order dated 11.10.2019 directed the AO to comply with such directions within a period of six months from the date of receipt of the order. Relevant portion of the order passed by the Tribunal is reproduced hereunder:-

> "**11.** Under these circumstances, we direct the Assessing Officer as under:
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> - **firstly**, to ascertain whether in the case of Shri Harish Kumar any finding has been given by the appellate authority that additions made in his hand should be taxed on protective basis and substantive addition should have been made in the hands of the donee, i.e. the assessee who has received the gift;
> - **secondly**, if addition has been deleted on merits in the case of Shri Harish Kumar then again no addition can be confirmed against the assessee. Until and unless the appellate authority has held that addition made in the hands of Shri Harish Kumar is to be examined or made in the case of the assessee no addition can be made or confirmed; and
> - **lastly**, if the substantive addition made in the hands of Shri Harish Kumar had attained finality then also no addition or any proceedings can be initiated against the assessee. The Assessing Officer is directed to comply with this direction within a period of six months from the date of receiving of the order, because already huge time have elapsed and by this time either the fate of the appeal of Shri Harish Kumar must have been decided or the assessment order in his case must have attained finality."
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> The Assessing Officer is directed to **comply with this direction within a period of six months from the date of receiving of the order**, because already huge time have elapsed and by this time either the fate of the appeal of Shri Harish Kumar must have been decided or the assessment order in his case must have attained finality."
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> 12. We are not deciding the issue on merit which has been argued by both the parties and same is kept open. In view of the observation made above, the appeal of the assessee is partly allowed for statistical purposes.
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> 13. Similarly in the case of M/ s. Ramesh Chawla (HUF) also, the Assessing Officer has made the addition on protective basis by

> making similar observation and even the Ld. CIT (A) has confirmed the addition on protective basis as he has followed the appellate order in the case of Mrs. Kanika Chawla. Accordingly, our finding and direction given above will apply mutatis mutandis in this appeal also. Accordingly, this appeal is also treated as partly allowed for statistical purposes.
> 14. In the result, both the appeals of the assessees are partly allowed."

10. Despite orders passed by the Tribunal, no action was taken by respondent No. 1 to give effect to the findings and directions of the Tribunal. Petitioner therefore sent a letter dated 27.03.2023 to respondent No. 1 for giving appeal effect to the orders of the Tribunal and for issuance of refund due for the subject AY.

11. Petitioner sent yet another letter dated 12.06.2023, reiterating the same request.

12. Upon receipt of the aforesaid letters, respondent No. 1 woke up and issued notices dated 21.07.2023 and 09.08.2023, directing the petitioner to file documents in relation to assessment of Harish Kumar. Petitioner submitted reply taking objection that the proceedings initiated vide notice dated 21.07.2023 have become time-barred, invalid and void, since no appeal effect order was passed within the time period granted by the Tribunal.

13. Despite petitioner's response dated 14.08.2023, respondent No. 1 again issued notice dated 16.08.2023 to the petitioner for providing documents. Petitioner filed response to the notice dated 16.08.2023, again reiterating that the proceedings were time-barred.

14. Petitioner deposited INR 37,73,012/- under protest against the raised demand.

15. Upon failure of respondent No. 1 to grant the refund, petitioner

filed the instant writ petition to ventilate its grievance against the inaction of the respondents.

16. Learned counsel appearing on behalf of the petitioner submitted that the action of the respondents in not giving appeal effect and not issuing the refund of tax is totally unreasonable and unjustifiable. It has been contended that the time of 12 months, prescribed under Section 153(3) of the Act for passing fresh assessment order for the concerned AY in the light of the Tribunal's order dated 11.10.2019 has already expired and therefore respondents cannot be allowed to pass a fresh assessment order at this stage.

17. Per contra, the learned counsel for the Revenue has submitted that AO has made all possible efforts to comply with the directions of the Tribunal to ascertain the fate of the appeal or finality of Assessment Order in case of Sh. Harish Kumar, however, the details about the filing of the appeal before the Appellate Authority or any finding of the Appellate Authority in the case of Sh. Harish Kumar could not be found nor provided by the assessee. It is argued that there is no deliberate delay in giving appeal effect and therefore the writ petition is liable to be dismissed.

18. The short question for our consideration in the present writ petition pertains to whether the limitation period for remand by the Tribunal would have to be strictly construed in the light of provisions of Section 254 read with Section 153(3) of the Act.

19. Concededly, the AO has not passed any Assessment Order pursuant to the order dated 11.10.2019 passed by the Tribunal. The petitioner's claim for refund is founded on the basis that assessment for

the AY 2004-05 is barred by limitation.

20. Sub Section 3 of Section 153 of the Act stipulates that an order for fresh assessment pursuant to an order under Section 254 or Section 263 or Section 264 of the Act may be made at any time before the expiry of a period of nine months. The said provision further stipulates that the aforesaid period has to be calculated from the end of the financial year in which order under Section 254 of the Act is received by the Authorities mentioned in the said Sections. It would be apposite to extract Section 153(3) of the Act hereunder:-

> "(3) Notwithstanding anything contained in [sub-sections (1), (1-A) and (2)], an order of fresh assessment [or fresh order under Section 92-CA, as the case may be,] in pursuance of an order under Section 254 or Section 263 or Section 264, setting aside or cancelling an assessment, [or an order under Section 92-CA, as the case may be] may be made at any time *before the expiry of nine months from the end of the financial year in which the order under Section 254 is received by the Principal Chief Commissioner or Chief Commissioner or [Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be,] or, as the case may be, the order under Section 263 or Section 264 is passed by the [Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be,]:*
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> [**Provided** that where the order under Section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under Section 263 or Section 264 is passed by the Principal Commissioner or Commissioner on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "nine months", the words "twelve months" had been substituted.]"

21. Admittedly, respondents did not file any appeal challenging the order dated 11.10.2019 passed by the Tribunal. The directions given by the Tribunal were to be carried out by the AO within a period of six months, but AO woefully failed to adhere to the stipulated timelines. No action was taken to give effect to the order of the Tribunal within the stipulated period. The statutory limitation period prescribed in sub section (3) of Section 153 of the Act also expired on 30.09.2021 i.e. 12 months from the end of the financial year in which the order was passed under Section 254 by the Tribunal. The underlying rationale of the Legislature behind the enactment of Section 153(3) and setting the limitation therein, cannot be envisaged to expand the time limit for passing of a fresh assessment. In fact, the said provision entails a strict adherence to the time period within which the remand order in the present case should have been passed by the respondents. The notices dated 21.07.2023, 09.08.2023 and 16.08.2023 for initiating fresh assessment were issued much beyond the statutorily prescribed period of limitation.

22. In view of the above, the contention that passing fresh Assessment Order pursuant to the Tribunal's order dated 11.10.2019 is barred under the provisions of Section 153(3) of the Act is merited and therefore the impugned notices issued by respondent No. 1 dated 21.07.2023, 09.08.2023 and 16.08.2023 cannot be sustained and need to be set aside.

23. What then is the effect of the failure to make an order of assessment within the limitation period, after the earlier assessment made is set aside or nullified in appropriate proceedings? This question

was dealt by the Supreme Court in the case of **Commissioner of Income Tax, Bhopal vs. Shelly Products and Another** [(2003) 5 SCC 461]. The relevant paras of the judgment are extracted below:-

> **"35.** What then is the effect of the failure to make an order of assessment after the earlier assessment made is set aside or nullified in appropriate proceedings? If the Assessing Authority cannot make a fresh assessment in accordance with the provisions of the Act it amounts to deemed acceptance of the return of income furnished by the assessee. In such a case the Assessing Authority is denuded of its authority to verify the correctness and completeness of the return, which authority it has while framing a regular assessment. It must accept the return as furnished and shall not in any event raise a demand for payment of further taxes. Accepting the income as disclosed in the return of income furnished by the assessee, it must refund to the assessee any tax paid in excess of the liability incurred by him on the basis of income disclosed. Even if the tax paid is found to be less than that payable, no further demand can be made for recovery of the balance amount since a fresh assessment is barred. In other words, the tax paid by the assessee must be accepted as it is, and in the event of the tax paid being in excess of the tax liability duly computed on the basis of return furnished and the rates applicable, the excess shall be refunded to the assessee, since its retention may offend Article 265 of the Constitution.
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> **36.** We cannot lose sight of the fact that the failure or inability of the Revenue to frame a fresh assessment should not place the assessee in a more disadvantageous position than in what he would have been if a fresh assessment was made. In a case where an assessee chooses to deposit by way of abundant caution advance tax or self-assessment tax which is in excess of his liability on the basis of return furnished or there is any arithmetical error or inaccuracy, it is open to him to claim refund of the excess tax paid in the course of assessment proceeding. He can certainly make such a claim also before the authority concerned calculating the refund. Similarly, if he has by mistake or inadvertence or on account of ignorance, included in his income any amount which is exempted from payment of income tax, or is not income within the contemplation of law, he may likewise bring this to the notice of the Assessing Authority, which if satisfied, may grant him relief and refund the tax paid in excess, if any. Such matters can be brought to the notice of the authority concerned in a case when refund is due and payable, and the authority concerned, on being satisfied, shall grant appropriate relief. In cases governed by Section 240 of the Act, an obligation is cast upon the Revenue to refund the amount to the assessee without his having to make any

> claim in that behalf. In appropriate cases therefore, it is open to the assessee to bring facts to the notice of the authority concerned on the basis of the return furnished, which may have a bearing on the quantum of the refund, such as those the assessee could have urged under Section 237 of the Act. The authority concerned, for the limited purpose of calculating the amount to be refunded under Section 240 of the Act, may take all such facts into consideration and calculate the amount to be refunded. So viewed, an assessee will not be placed in a more disadvantageous position than what he would have been, had an assessment been made in accordance with law."

24. In view of the aforesaid, since the respondents have failed to comply with the order of the Tribunal in passing a fresh Assessment Order within the stipulated time, we hold that the income as returned by the petitioner, Mr. Ramesh Chawla (HUF) would stand accepted. The logical consequence of refund of amount in excess of admitted liability insofar as the tax paid in the year AY 2004-05 will have to be made good by the respondent Department to the petitioner.

25. Accordingly, the impugned notices dated 21.07.2023, 09.08.2023 and 16.08.2023 are set aside. Respondents are directed to refund the amount of Rs. 37,73,012/- in terms of the discussion made herein above along with interest as applicable within a period of eight weeks from today.

26. The petition is allowed in the aforesaid terms.

RAVINDER DUDEJA, J.

YASHWANT VARMA, J.

13 August 2024/*RM*