

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

WRIT PETITION NO.1238 OF 2020

Salsette Catholic Cooperative
Housing Society Limited ..Petitioner
Versus
Assistant Commissioner of Income Tax & Ors. ..Respondents

WITH
WRIT PETITION (L) NO.6028 OF 2020

Salsette Catholic Cooperative
Housing Society Limited ..Petitioner
Versus
Assistant Commissioner of Income Tax & Ors. ..Respondents

WITH
WRIT PETITION NO.1229 OF 2020

Salsette Catholic Cooperative
Housing Society Limited ..Petitioner
Versus
Assistant Commissioner of Income Tax & Ors. ..Respondents

Mr. Devendra Jain i/by Ms. Radha Halbe, Advocate for the Petitioner.
Mr. Sham Walve, Advocate for the Respondents.

CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.
DATE : 8th MARCH, 2021

P.C.

This order will dispose of all the three writ petitions.

2. The three writ petitions have been filed under Article 226 of

the Constitution of India seeking a direction to the respondents to give effect to the appellate order passed by the first appellate authority i.e. Commissioner of Income Tax (Appeals).

3. Heard Mr. Devendra Jain, learned counsel for the petitioner and Mr. Sham Walve, learned standing counsel revenue for the respondents.

4. Petitioner is a co-operative housing society having its office at Bandra Gymkhana, Mumbai.

5. For the assessment year 2008-09 petitioner filed return of income on 02.01.2009 declaring total income at Rs.21,74,000.00. Though intimation under section 143(1) of the Income Tax Act, 1961 was issued to the petitioner subsequently the assessment was reopened by issuance of notice under section 148 whereafter assessment order dated 31.03.2016 was passed by respondent No.1 under section 143(3) of the Income Tax Act, 1961 (briefly “the Act” hereinafter). By the said order of assessment, the total income of the petitioner was computed and rounded off at Rs.45,29,81,970.00.

6. Aggrieved by the aforesaid order of assessment, petitioner preferred appeal before the Commissioner of Income Tax (Appeals)-32, Mumbai [briefly “the Commissioner of Income Tax (Appeals)” hereinafter]. It is stated that 20% of the outstanding demand being Rs.3,67,42,100.00 was deposited by the petitioner for the purpose of seeking stay of the demand. Ultimately, by the appellate order dated 27.03.2019,

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Commissioner of Income Tax (Appeals) deleted the addition of Rs.44,54,14,722.00 made by the assessing officer on account of capital gains. Consequently assessing officer was directed to recompute the interest under section 234B and 234C of the Act while giving effect to the appellate order. Thus, the appeal was partly allowed.

7. Petitioner thereafter made an application on 29.03.2019 to respondent No.1 requesting the said authority to give effect to the order of the appellate authority. This was followed by several subsequent applications. However, instead of giving effect to the appellate order respondent No.1 in fact initiated recovery proceedings by issuing notice under section 221(1) of the Act. Though petitioner lodged grievance, no relief was granted.

8. Aggrieved, writ petition No.1238 of 2020 has been filed seeking a direction to the respondents to give effect to the appellate order dated 27.03.2019 passed under section 250 of the Act along with applicable interest under section 244A thereof.

9. In Writ Petition (L) No.6028 of 2020 petitioner filed return of income for the assessment year 2013-14 on 24.09.2013 declaring total income of Rs.4,22,130.00. The case was selected for scrutiny whereafter assessment order dated 30.03.2016 was passed by the first respondent under section 143(3) of the Act. By the said order of assessment, total income of the assessee i.e., the petitioner was computed and rounded off at Rs.2,13,29,800.00.

10. Petitioner challenged this order of assessment before the Commissioner of Income Tax (Appeals). It is stated that for the purpose of obtaining stay of the demand, petitioner deposited a sum of Rs.16,90,900.00 being 20% of the outstanding demand. However, by the appellate order dated 15.03.2019, Commissioner of Income Tax (Appeals) allowed the appeal by holding that assessing officer was not justified in denying deduction under section 80P(2)(d) of the Act amounting to Rs.2,09,07,669.00. Accordingly, assessing officer was directed to allow the said deduction and thereafter to recompute the total income. In so far levy of interest under sections 234A and 234B of the Act is concerned, assessing officer was directed to modify and recompute the interest while giving effect to the appellate order.

11. Petitioner made application before respondent No.1 on 20.03.2019 to give effect to the appellate order dated 15.03.2019 passed under section 250 of the Act. This was followed by subsequent applications. However, instead of giving effect to the appellate order first respondent in fact initiated recovery proceedings by issuing notice to the petitioner under section 221(1) of the Act on 09.01.2020.

12. Aggrieved, present writ petition has been filed seeking a direction to the respondents to give effect to the appellate order dated 15.03.2019 along with interest under section 244A of the Act.

13. For the assessment year 2014-15 which is the subject matter of Writ Petition No.1229 of 2020, petitioner filed its return of income on

30.08.2014 declaring total income at Rs.1,65,16,330.00. The return of the petitioner was selected for scrutiny whereafter assessment order was passed on 30.12.2016 under section 143(3) of the Act. By the said order of assessment, assessing officer added income from house property and income from capital gains to the extent of Rs.1,05,63,437.00 and Rs.79,36,105.00 respectively to the income of the petitioner and thus, computed the total income which was rounded off to Rs.4,11,47,400.00.

14. Aggrieved by the aforesaid order of assessment, petitioner preferred appeal before Commissioner of Income Tax (Appeals). It is stated that for the purpose of stay an amount of Rs.21,35,000.00 being 20% of the outstanding demand was deposited by the petitioner. However, by the order dated 20.03.2019 Commissioner of Income Tax (Appeals) allowed the appeal by holding that petitioner would be entitled to the claim of deduction under section 80P(2)(d) of the Act and therefore assessing officer was not justified in denying deduction under the said provision amounting to Rs.2,46,31,070.00. Accordingly, assessing officer was directed to allow the said deduction and thereafter to recompute the total income. In so far levy of interest under sections 234A and 234B was concerned, assessing officer was directed to modify and recompute the interest amounts while giving effect to the order passed in appeal.

15. Like in previous orders, petitioner filed application dated 27.03.2019 before respondent No.1 to give effect to the appellate order which was followed by subsequent applications. However, instead of giving effect to the appellate order first respondent initiated recovery proceedings

by issuing notice under section 221(1) of the Act. Though petitioner lodged grievance online, no relief was granted.

16. Aggrieved, present writ petition has been filed seeking a direction to the respondents to give effect to the order dated 20.03.2019 passed by the Commissioner of Income Tax (Appeals) under section 250 of the Act along with interest under section 244A.

17. This Court by order dated 09.12.2020 had directed learned standing counsel to take up the matter with the respondents and to work out the matter pertaining to refund of dues of the petitioner. When on the next date i.e. on 12.01.2021, Mr. Sham Walve produced copies of orders passed by respondent No.1 giving effect to the orders passed by the Commissioner of Income Tax (Appeals) with the submission that there could be adjustment of refund against pending demand in certain cases, learned counsel for the petitioner was directed to file a compilation containing all relevant documents on the subject.

18. Accordingly, Mr. Devendra Jain has filed a compilation.

19. We find that in so far assessment year 2008-09 is concerned, respondent No.1 passed order dated 11.08.2020 giving effect to the appellate order. As per the said order the revised total income after giving effect to the appellate order would be Rs.21,74,000.00 on which statutory interest under sections 234A, 234B and 2243C would be applicable. In so far assessment year 2013-14 is concerned, the order giving effect to the appellate order was passed on 14.12.2020 whereafter revised total income

has been computed at Rs.4,22,130.00. As regards assessment year 2014-15 is concerned, the order giving effect to the appellate order was passed on 14.12.2020 by the first respondent whereby the total income was revised at Rs.1,65,16,330.00.

20. Learned counsel for the petitioner submits that in all the three assessment years, petitioner had deposited 20% of the outstanding demand before the Commissioner of Income Tax (Appeals) while preferring appeal for seeking stay. These amounts have not been taken into consideration by the first respondent while giving effect to the orders of the Commissioner of Income Tax (Appeals). He has also referred to provisions of section 153(5) of the Act to contend that an order passed by the appellate authority under section 250 of the Act is required to be given effect to within three months, but in exceptional cases the said period can be extended upto six months upon approval of the Principal Commissioner or Commissioner as the case may be. In all the three cases, the orders giving effect to the appellate orders were passed much beyond the statutory period of three months or even the extended period of six months. Whether approval of the Commissioner or the Principal Commissioner was obtained or not is not discernible. That apart, petitioner is entitled to interest under section 244A. Learned counsel for the petitioner has also referred to Circular No.19 of 2019 dated 14.08.2019 of the Central Board of Direct Taxes (CBDT) to contend that all notices and orders of the Income Tax Department are required to be generated electronically on the Income Tax Business Application platform. Despite that there are instances where notices, orders, summons, letters or correspondences etc. were found to

have been issued manually without maintaining a proper audit trail. Consequently, the circular mandates that no such communication shall be issued by any income tax authority on or after 01.10.2019 unless a computer generated Document Identification Number is allotted and is duly quoted on the body of such communication. Referring to the orders giving effect to the appellate orders, he submits that these orders have been issued manually without quoting the Document Identification Number. Relying upon the said circular, he submits that in the absence thereof the orders giving effect to the appellate orders would be treated as invalid and *no-nest*.

21. Mr. Sham Walve, learned standing counsel revenue submits that grievance of the petitioner as could be seen from the prayer portion was against not giving effect to the appellate orders. Now that the appellate orders have been given effect to, if the petitioner still remains aggrieved it may take recourse to its remedy as provided under the law to assail such order. He therefore submits that considering the fact that orders have been passed giving effect to the orders of the Commissioner of Income Tax (Appeals), the present writ petitions do not survive for further adjudication. In addition, he submits that there are demands pending for assessment years under consideration which have been adjusted or may still have to be adjusted against the orders passed by the respondent No.1 giving effect to the orders passed by the Commissioner of Income Tax (Appeals).

22. Submissions made by learned counsel for the parties have been duly considered. Also perused the materials on record.

23. As would be evident from the above, principal grievance of the petitioner was that respondents had not given effect to the orders passed by the Commissioner of Income Tax (Appeals) under section 250 of the Act. From the documents placed on record, we find that the said grievance has been redressed. Petitioner may still have its grievance in so far the orders passed by respondent No.1 giving effect to the appellate orders but before dilating further, we may refer to two of the relevant provisions of the Act. Section 153 deals with time limit for completion of assessment, reassessment and recomputation. Sub section (5) thereof says that where an assessing officer is required to give effect to an order passed under section 250 or such other provisions as mentioned therein, otherwise than by making a fresh assessment or reassessment the same shall be done within a period of three months from the end of the month in which the order under section 250 was received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as the case may be. The first proviso is relevant. It says that where it is not possible for the assessing officer to give effect to such order within the aforesaid period for reasons beyond his control, the Principal Commissioner or Commissioner on receipt of such request in writing from the assessing officer may allow an additional period of six months to give effect to the order if the said authority is satisfied.

24. Thus from the above, we find that after an order is passed by the Commissioner of Income Tax (Appeals) under section 250, the same has to be given effect to within a period of three months from the end of the month in which the order under section 250 is passed. The period of

three months as above would be computed from the date of receipt by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as the case may be. If however, it is not possible for the assessing officer to give effect to the appellate order within the aforesaid period of three months which has to be for reasons beyond his control, he has to make a request to the Principal Commissioner or the Commissioner seeking extension of time. Upon receipt of such request in writing, the Principal Commissioner or Commissioner as the case may be may allow an additional period of six months to give effect to the appellate order, if he is satisfied that such a request is required to be granted.

25. In so far the present group of cases is concerned, we find that for the assessment year 2008-09 the appeal was allowed on 20.03.2019 and this was brought to the notice of respondent No.1 on 29.03.2019. For the assessment year 2013-14 the appeal was allowed on 15.03.2019 which was brought to the notice of respondent No.1 on 20.03.2019. Likewise for the assessment year 2014-15 the appeal was allowed by the Commissioner of Income Tax (Appeals) on 20.03.2019 which was brought to the notice of respondent No.1 on 27.03.2019. Looking at the requirement of section 153(5) of the Act, the orders giving effect to the appellate orders were to be passed by 30th June 2019. If the extended period of six months is added to this, then the orders ought to have been passed by 30th December 2019. However, nothing has been placed before us as to whether respondent No.1 made written request before respondent No.2 for extension of time and whether respondent No.2 had granted such extension of time on being satisfied. Thus, there is clear delay in passing the orders by respondent

No.1 giving effect to the appellate orders.

26. Section 244A deals with interest on refunds. As per sub section (1) simple interest has to be paid to an assessee where refund of any amount becomes due to be calculated in the manner provided thereunder. Sub section (1A) says that in a case where a refund arises as a result of giving effect to an order under sections 250 etc. the assessee shall be entitled to receive in addition to the interest payable under sub section (1), an additional interest on such amount of refund calculated at the rate of three percent per annum for the period beginning from the date following the date of expiry of the time allowed under sub section (5) of section 153 to the date on which refund is granted.

27. We find from a perusal of the orders dated 11.08.2020, 14.12.2020 and 14.12.2020 that the provisions contained in section 153(5) of the Act have not been taken into consideration. We also find that the requirement of paying interest under section 244A is also missing from the above orders. The above orders are also silent on the adjustment of the 20% of the initial outstanding dues paid by the petitioner before the Commissioner of Income Tax (Appeals) while filing appeals for the purpose of stay. Lastly, the impact of CBDT Circular No.19 of 2019 dated 14.08.2019 on the orders dated 11.08.2020, 14.12.2020 and 14.12.2020 is also required to be assessed because we find that these orders have been manually issued without quoting any Document Identification Number.

28. At this stage, Mr. Sham Walve points out that there are

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outstanding demands against the petitioner starting from the assessment year 2008-09 upto the assessment year 2017-18 which are required to be adjusted against any refund that may be made to the petitioner.

29. In such a situation, we are of the view that it would be in the interest of justice if the Principal Commissioner of Income Tax-19 i.e. respondent No.2 himself looks into the above aspects including impact of Circular No.19 of 2019 and thereafter decide afresh the issue relating to giving effect to the orders of the Commissioner of Income Tax (Appeals) passed under section 250 of the Act for the three assessment years 2008-09, 2013-14 and 2014-15. Respondent No.2 shall consider all aspects including payment of interest etc. and adjustment, if any, thereafter shall take an appropriate decision after giving an opportunity of hearing to the petitioner.

30. Let the consequential order be passed by respondent No.2 within a period of eight weeks from the date of receipt of a copy of this order.

31. All contentions are kept open.

32. Writ petitions are accordingly disposed of.

MILIND N. JADHAV, J

UJJAL BHUYAN, J