IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 7246 of 2013

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE M.R. SHAH -sd/-
and
HONOURABLE MS JUSTICE SONIA GOKANI sd/-

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1.	Whether Reporters of Local Papers may be allowed to see the judgment ?	**YES**
2.	To be referred to the Reporter or not ?	**NO**
3.	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
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 ?	**NO**
5.	Whether it is to be circulated to the civil judge ?	**NO**

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MANOHARLAL AGARWAL....Petitioner(s)
Versus
COMMISSIONER OF INCOME TAX - 3 & 1....Respondent(s)

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Appearance:
MR RK PATEL, ADVOCATE for the Petitioner(s) No. 1
MS PAURAMI B SHETH, ADVOCATE for the Respondent(s) No. 1 - 2

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

Date : 24/06/2013

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE M.R. SHAH)

1.0. Rule. Ms. Paurami Sheth, learned advocate waives service of notice of Rule on behalf of respondents. In the facts and circumstances of the case and with the consent of the learned advocates for the respective parties, present application is taken up for final hearing today.

2.0. By way of this petition under Article 226 of the Constitution of India, the petitioner assessee has prayed for an appropriate writ, direction and order to quash and set aside the impugned order dated 14.2.2013 passed by the Commissioner of Income Tax, III, Ahmedabad and to direct grant credit for TDS on verification of the Form No.26(AS) at Annexure A.

2.1. The facts leading to the present petition in nutshell are as under:

2.2. That the petitioner -assessee E filed return of income for the assessment year 2010-11 on 15.11.2010 showing net income of Rs.1,72,700/-. However, due to the oversight, the TDS claim of Rs.29,326/- was not made in the original return of income although the income against such tax deduction was included in the computation of income. That assessee received the intimation under Section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as the "Act"). As it was found that in the said intimation under Section 143(1) of the Act there was no grant of credit for TDS and consequently without grant of refund due to mistake of the assessee, a revised return was submitted on 10.3.2011 for the same taxable income with the only change being claim of TDS and consequent claim of refund. The assessee also filed application under Section 264 of the Act before respondent no.1 CIT(Gujarat)-III on dated 1.3.2011 praying for refund of amount for TDS claim, which was not made in the original return through assessee bona fide error. The petitioner-assessee also filed detailed written statement on dated 7.1.2013. However, vide order dated 14.2.2013 impugned in the present petition, respondent no.1 has dismissed the said revision under Section 264 of the Act mainly on the ground that original

return of the income was a belated return. The respondent no.1 also observed that revised return filed by the assessee was non-est as it was not valid return under Section 143(1) of the Act and is based on the return filed by the assessee in which claims of TDS was admittedly not made by the assessee and hence it cannot be said that the intimation under Section 143(1) of the Act was admittedly not made by the assessee.

2.3. Feeling aggrieved and dissatisfied with the impugned decision/ order, the petitioner-assessee has preferred present Special Civil Application.

3.0. Shri R.K. Patel, learned advocate for the petitioner -assessee has vehemently that the impugned order under Section 264 of the Act is bad in law since credit for TDS and refund thereof is not granted to the petitioner inspite the parallel details of relevant Form No.26(AS), available with the revenue authorities at the time of processing of intimation under Section 143(1) as well as at the proceedings under Section 264 of the Act.

3.1. It is submitted that the respondent no.1 CIT has erred in dismissing the application of the petitioner on technical ground of original return not being filed in time and hence the revised return being incompetent in law ignoring the case law.

3.2. It is submitted that as such deduction of the TDS and consequently the credit of the same and the refund thereof is not disputed by the department. It is submitted that once the petitioner-assessee has deducted the TDS, the assessee is entitled to credit for the same and / or refund for the same. It is submitted that as such

having realized the mistake of not claiming the credit / refund of TDS already deducted, the revised return was submitted within the prescribed period of limitation and therefore, the appropriate authority ought to have accepted the revised return and ought to have given the credit of TDS and / or refund the TDS, which is already deducted considering the contents of Form No.26(AS), which is at Annexure A to the petition.

4.0. Ms. Sheth, learned advocate for the respondents has tried to oppose the present Special Civil Application and support the impugned order passed by the respondent no.1-CIT, III, Ahmedabad. However, is not in a position to dispute and in fact the department is not disputing that as such TDS has been deducted for which petitioner-assessee would be entitled to credit and / or refund. However, has submitted that as it was found that the original return was submitted belatedly and even in the return the assessee did not claim the credit and / or refund of TDS and as it was found that even revised return was beyond the period of limitation prescribed and therefore, non-est, no illegality has been committed by the either by the ITO or even by the respondent no.1 in dismissing the application under Section 264 of the Act. Relying upon the affidavit in reply filed on behalf of the respondents, it is requested to dismiss the present petition.

5.0. Heard the learned advocates for the respective parties at length. At the outset, it is required to be noted and it is not in dispute that in fact TDS has been deducted and the had been deposited with the department. However, by mistake and / or through oversight while submitting the E return, the petitioner -assessee did not claim credit for TDS already deposited with

department in computation of the petitioner tax liability of the assessment year 2010-11. As soon as the petitioner-assessee came to know that there was a mistake in not claiming credit of the TDS on receiving the intimation under Section 143(1) dated 7.1.2011 immediately within a period of two months, the petitioner-assessee submitted the revised return claiming credit / refund of TDS which was already deposited with the department. However, as the same was not accepted, the petitioner -assessee preferred revision under Section 264 of the Act, which is rejected by the respondent no.1 vide impugned order. It appears that the revision is dismissed on the following three grounds.

(i). That the original return was belated. The same, therefore, could not have been revised.

(ii). The revised return was also beyond the period of limitation prescribed and the same was, therefore, non-est and

(iii). That the acceptance of the petitioner's return under Section 143(1) of the Act cannot be described as an order, which is subject to revision under Section 264 of the Act.

5.1. It is not in dispute that the petitioner-assessee filed E return on 15.11.2010 and the intimation under Section 143(1) of the Act is dated 7.1.2011 and the petitioner assessee submitted the revised return on 10.3.2011. The said revised return was under sub-section (5) of the Section 139 of the Act, which reads as under:

> *If any person, having furnished a return under sub-section(1) or in pursuance of a notice issued under sub-section (1) of Section 142, discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier*

5.2. It is required to be noted that even the respondent no.1 in the impugned order has stated that intimation order under Section 143(1)(a) cannot be treated to be an order of assessment. In that case, it was open for the assessee to submit the revised return at any time before the expiry of one year from the end of the relevant assessment year. As the revised return submitted by the assessee is within the prescribed period of limitation as provided under sub-section (5) of Section 139, it cannot be said that revised return submitted by the petitioner-assessee was not within the limitation period. Considering the aforesaid facts and circumstances of the case, we are of the opinion that revised return submitted by the petitioner assessee was within the period of limitation prescribed and therefore, the same ought to have considered by the authority. As stated above, as such it is not disputed by the department that in fact tax was not TDS and the same was not deposited with the department and it is not disputed that as such petitioner -assessee is not entitled to credit for the TDS already deposited with the department, particulars of which are mentioned in form no.26(AS), which is at Annexure A to the petition. In view of the above, we are of the opinion that the department has taken too technical view and as such not justified in not giving the credit of TDS already deposited with the department, the particulars of which are mentioned in Form No.26(AS) at Annexure A, for which revised return was submitted. Under the circumstances, petition is to be allowed by directing concerned respondent to give credit and / or refund the TDS already deducted as per the particulars mentioned in Annexure A to the petition.

6.0. In view of the above and for the reasons stated above, petition succeeds and the respondents, more particularly, respondent

no.2 is hereby directed to give credit for TDS already deposited with the department as per the particulars mentioned in Form No.26(AS) (Annexure A to the petition). Rule is made absolute to the aforesaid extent. In the facts and circumstances of the case, there shall be no order as to costs.

sd/-
(M.R.SHAH, J.)

sd/-
(MS SONIA GOKANI, J.)

Kaushik