



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Writ Petition No. 2120/2020

Ram Gopal Sharma (Senior Citizen) Son Of Shri Kanhaiyalal Sharma, Aged About 83 Years, Resident Of 92, Shivaji Nagar, Civil Lines, Jaipur In The State Of Rajasthan.

----Petitioner

Versus

1. Income Tax Officer, Ward 2(3), Jaipur Having Its Office At New Central Revenue Building, Statue Circle, Bhagwan Das Road, Jaipur.

2. Central Board Of Direct Taxes, Having Its Address At North Block, New Delhi Through Its Chairman.

----Respondents



For Petitioner(s) : Mr. Siddharth Ranka, Adv. with Ms. Apeksha Bapna, Adv.

For Respondent(s) : Mr. Anuroop Singhi, Adv. with Mr. N. S. Bhati, Adv.

**HON'BLE THE ACTING CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE SAMEER JAIN**

Order

23/05/2022

1. Learned counsel for the petitioner has submitted that the petitioner is a senior citizen and has been filing regular income tax return. In the instant case, return of income tax was filed on 23.07.2017 for the assessment year 2017-18. The same came in scrutiny and high pitched additions were made vide assessment order dated 28.11.2019. It is submitted that income assessed by Assessing Officer was Rs. 24,04,440/-, which is more than two times the returned income, and a demand of Rs. 12,62,649/- was created. Against the said order, appeal before the Commissioner Of Income Tax (Appeal-1) was preferred on 18.12.2019, within a period of 30 days. After filing appeal, the petitioner suo moto deposited a sum of Rs. 2,52,530/- on 18.12.2019, which was



equivalent to 20% of demand created, in terms of Office Memorandum dated 29.02.2016 and 31.07.2017, issued by respondent No. 2. As a matter of precaution, stay application dated 26.12.2019 was also filed by the petitioner, requesting for keeping the demand in abeyance till the disposal of the appeal.

2. It is further submitted that the Assessing Officer i.e. respondent No. 1, against all canons of law, without disposing the stay application filed by the petitioner, without considering the fact that the petitioner has himself deposited Rs. 2,52,530/- and bypassing the Office Memorandum dated 29.02.2016 and 31.07.2017, initiated coercive recovery on 28.01.2020 and recovered entire amount of Rs. 12,62,650/- from the bank account of the petitioner in a exparte manner.

3. In this background, present writ petition was filed against the adversarial and illegal approach of the respondents contrary to their own circulars and provisions of law and against orders passed by Hon'ble Supreme Court and Hon'ble Jurisdictional High Court and other Hon'ble High Court's.

4 *Per contra*, learned Standing Counsel, Mr. Anuroop Singhi, submitted that the amount of Rs 2,52,530, equivalent to 20% of additional demand, which was deposited by the petitioner on 18.12.2019 was already refunded to him vide rectification order (u/s 154 r.w.s 144 of the I.T. Act, 1961) dated 01.06.2020, after the recovery of entire amount of Rs. 12,62,650 from the petitioner, which was done on 28.01.2020. On the date of hearing, however, learned counsel for the respondent fairly conceded that recovery of over 20% of demand, before disposal of appeal is not



appropriate. He was further unable to refute the narration and positions submitted by counsel for the petitioner. He fairly conceded that petitioner is entitled to refund of amount in excess of 20% of the total demand which was recovered from him.

5. In this background, relying upon the Office Memorandum dated 29.02.2016 & 31.07.2017, considering Section 220(6) of the I.T. Act, 1961, considering the fair admission on part of Standing Counsel, and considering the fact that the amount of Rs 2,52,531, equivalent to 20% of the demand, was already refunded by department on 01.06.2020, this court deems it appropriate to direct the respondent to refund the excess amount of Rs 10,10,119, being 80% of the demand that is already recovered from the petitioner. The respondents are entitled to keep 20% of the demand, i.e. Rs 2,52,530 in terms of Office Memorandum dated 29.02.2016 and 31.07.2017, until the appeal of petitioner pending before Commissioner Of Income Tax (Appeal-1) is decided. The refund of Rs. 10,10,119 be made to the petitioner within a period of 30 days from the pronouncement of this judgment, failing which respondent will be liable to pay interest as applicable. Upon delay of the payment, interest as applicable will be recovered from the erring officer/respondent.

6. In light of the above, the writ petition is disposed off. All pending applications also stand disposed off.

(SAMEER JAIN),J

(MANINDRA MOHAN SHRIVASTAVA),ACTING CJ