IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2017

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
And
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

T.C.A.Nos.879 to 882 of 2016
And
C.M.P.Nos.20446 to 20448 of 2016

The Commissioner of Income Tax,
Chennai. ... Appellant in all the T.C.As.

Vs.

M/s.Indian Overseas Bank
762, Anna Salai
Chennai. ... Respondent in all the T.C.As.

Common Prayer:

Appeals filed under Section 260-A of the Income Tax Act, 1961, against the order dated 31.07.2015 passed in M.P.Nos.133/Mds/2014, 134/Mds/2014, 135/Mds/2014 and 136/Mds/2014 respectively, in I.T.A.Nos.117/Mds/2007, 118/Mds/2007, 577/Mds/05 and 578/Mds/2005 respectively, by the Income Tax Appellate Tribunal, Madras "A" Bench, Chennai. against the order dated 17/10/2006 passed by the Commissioner of Income Tax (Appeals)III, Chennai-34, for the Assessment year (i) 2000-01 in I.T.A.No.320/2006-07/A.III, (ii) 2003-04 in I.T.A.No.321/2006-07/A-III, respectively and against order dated 29/11/2004 made in (i) I.T.A.TR.No.378/01-02 passed by the Commissioner of Income Tax, (Appeals) XI, Chennai, (ii) against the order dated 6/12/2004 passed by the Commissioner of Income-Tax (Appeals) XI, Chennai, in ITA No.08/2000-01 respectively, against the orders of the Joint Commissioner of Income tax, Special Range-I, Chennai dated 20-03-2000 & 30-03-2001 in P.A.No/G.I.No.AAACI 1223J/4-I and orders Assistant Commissioner of Income Tax, Chennai dated 30/03/2006 and 31/03/2006 in G.I.No./P.A.No.AAACI 1223J/1025-1

For Appellant : Mr.T.Ravi Kumar

For Respondent : Mr.Vijaya Raghavan
for M/s.Subbaraya Iyer

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by RAJIV SHAKDHER,J.)

1.These are four appeals filed under Section 260-A of the Income Tax Act, 1961 (in short, the Act).

1.1.These appeals are directed against a common judgment and order dated 31.07.2015, passed by the Income Tax Appellate Tribunal (in short, the Tribunal).

2.The appellant, i.e., the Revenue, is aggrieved by the fact that the Tribunal has, vide, the impugned judgment recalled its order dated 18.04.2013, passed in miscellaneous petitions, i.e., M.P.Nos.133 to 136/Mds/2014, preferred by the Assessee.

3.A perusal of the record would show, that it is in common ground, that the order dated 18.04.2013, was passed by the Tribunal suo motu, without it being triggered, either based on an application filed by the Revenue or the Assessee.

4.To be noted, by virtue of the order dated 18.04.2013, the Tribunal recalled its earlier orders, dated 20.08.2007 and 21.01.2008.

4.1.Via the said orders, the Tribunal had dismissed the appeals of the Revenue, evidently, on the ground, that approval of Committee On Disputes (in short, COD), was not taken for prosecution its appeals, before the Tribunal.

4.2.Quite obviously, the recall of the said orders, by the Tribunal, vide its order dated 18.04.2013, caused prejudice to the Assessee.

5.It is, in this background, that the Tribunal passed the impugned judgment dated 31.07.2015, whereby, while allowing the miscellaneous petitions, filed by the Assessee, it recalled its earlier order dated 18.04.2013 and restored the orders dated 20.08.2007 and 21.01.2008.

6.Mr.Ravi, who appears for the Revenue, says that the impugned judgment and order of the Tribunal, is erroneous, both in law and on facts, and hence, deserves to be set aside.

7.In support of his submissions, learned counsel contends that the order dated 18.04.2013, came to be passed by the Tribunal, in view of the subsequent judgment of the Supreme Court, rendered in: Electronics Corporation of India Limited Vs. Union of India and others, (2011) 332 ITR 58.

8.It was, thus, the contention of the learned counsel that in view of the directions issued by the Supreme Court in the matter of Electronics Corporation of India Limited, the earlier regime, which was in place, which required, Government Departments, which included the Income Tax Department to obtain approval of the COD, before prosecuting any action against another Government Department and/ or Public Sector Undertakings, was done away with.

8.1.The submission, therefore, advanced by Mr.Ravi, was that, the order of recall, though suo motu, was an order, based on the judgment of the Supreme Court rendered in Electronics Corporation of India Limited case.

9.As against this, learned counsel for the Assessee submits that no interference is called for, with the impugned judgment of the Tribunal, for the reason that, it is common ground, that the Tribunal in passing the order dated 18.04.2013, had acted on its own, without noticing the affected party, that is, the Assessee.

9.1.The submission being that the order dated 18.04.2013 was passed, in complete breach of the principles of natural justice, and therefore, by virtue of the impugned judgment, the Tribunal corrected that error.

10.This apart, the learned counsel submitted that the order dated 18.04.2013, was beyond the jurisdiction of the Tribunal, in view of the fact that it was passed, well beyond the period of limitation prescribed under Section 254 (2) of the Act.

10.1.In other words, the submission, was that, even if suo motu powers were exercised by the Tribunal, they could not have been exercised, beyond the period of limitation, prescribed under Section 254 (2) of the Act.

11.In support of the submissions made above, reliance was placed by the learned counsel for the Assessee on the following two judgments of the Bombay High Court: Commissioner of Income-tax-2 Vs. Central Bank of India, [2014] 51 taxmann.com 527 (Bombay) and Commissioner of Income-tax-5, Mumbai Vs. Air India Limited, [2016] 66 taxmann.com 52 (Bombay).

12.We have heard the learned counsels for the parties and perused the record.

13.According to us, the following facts, clearly, emerge from the record:

(i)That the Revenue's appeals for assessment years, AY 1997-98 and AY 1998-99, were dismissed, by the Tribunal, vide judgment and order, dated 20.08.2007.

(ii)Revenue's appeals for assessment years AY 2000-01 and AY 2003-04, were dismissed, by the Tribunal, vide judgment and order, dated 21.01.2008.

(iii)It is the Assessee's case that both appeals were dismissed, for want of approval from COD.

(iv)The Revenue, on the other hand, has indicated, by way of note placed before the Court, that appeal for assessment year, AY 1997-98, was rejected, as no approval was obtained from COD, while appeal for assessment year AY 1998-99, was dismissed in limine, as approval for filing an appeal, was refused by COD.

(v)Insofar as assessment years AY 2000-01 and AY 2003-04, are concerned, the note submitted by the Revenue, does not elaborate specifically, as to why, appeals were dismissed.

(vi)The petition filed by the Revenue, before the Tribunal, which is dated 20.11.2015, however, adverts to the fact, that appeals filed by the Revenue for assessment years, AY 1997-98, AY 1998-99, AY 2000-01 and AY 2003-04, were dismissed, for want of COD approval.

(vii)The Tribunal suo motu recalled orders dated 20.08.2007 and 21.01.2008, vide, order dated 18.04.2013.

(viii)In the interregnum, i.e., on 17.02.2011, the Supreme Court rendered its judgment in Electronics Corporation of India Limited case.

(ix)The Revenue filed its miscellaneous petitions to seek recall of orders dated 20.08.2007 and 21.01.2008, only on, 15.01.2013, that is, much after the decision in Electronics Corporation of India Limited case had been delivered.

14.Having regard to the aforesaid facts and circumstances, what is clear, is that after the Supreme Court had rendered its judgment in the Electronics Corporation of India Limited case, the Revenue perhaps, still had time to seek rectification of the orders, passed by the Tribunal, i.e., orders dated 20.08.2007 and 21.01.2008.

15.The Revenue, for the reasons best known to itself, had filed, as noticed above, miscellaneous petitions only on 15.01.2013. Clearly, on the date, when these petitions were filed, the period of limitation prescribed under Section 254 (2) of the Act, had been crossed.

16.The Tribunal, could have recalled its orders, dated 20.08.2007 and 21.01.2008, based on the petitions filed by the Revenue, if the same, had been filed, within a period of four years, from the date, when the said orders were passed.

16.1.Since, the miscellaneous petitions filed by the Revenue were beyond time, clearly, they could not have been entertained by the Tribunal.

16.2.The fact however, remains that these miscellaneous petitions dated 15.01.2013, were never pressed before the Tribunal, prior to its recall order dated 18.04.2013. The said petitions were brought up, before the Tribunal only on 29.07.2016.

16.3.The record would show that the said miscellaneous petitions were numbered by the Tribunal only in 2013.

16.4.The numbers accorded to these miscellaneous petitions, were: M.P.Nos.224/Mds/2013, 225/Mds/2013 and 226/Mds/2013.

16.5.As would be evident from the numbers set out above, for one assessment year, no petition appears to have been filed.

17.As is evident from the facts narrated above, in the meanwhile, the Assessee had filed and pressed, instead, its miscellaneous petitions bearing numbers: M.P.Nos.133 to 136/Mds/2014 - for recall of order dated 18.04.2013.

17.1.The Tribunal, therefore, passed the impugned judgment and order dated 31.07.2015 based on the Assessee's miscellaneous petitions.

18.In our view, apart from a slight procedural infraction, which is, that no formal orders were passed by the Tribunal, qua the Revenue's Miscellaneous petitions, the conclusion reached by the Tribunal cannot be faulted as it is in consonance with the principles of natural justice.

19.The fact that no notice was given to the Assessee by the Tribunal, prior to passing the order dated 18.04.2013 having not been disputed before us, persuades us, to sustain the view taken by the Tribunal, in the impugned judgment.

20.We may, only indicate herein, that it was sought to be emphasised by Mr.Ravi, that the limitation prescribed under Section 254 (2) of the Act, did not apply, when, the Tribunal exercises suo motu powers.

20.1.It was the learned counsel's submission that while exercising suo motu powers, the Tribunal takes recourse to inherent powers vested in it.

21.In our opinion, this submission cannot be sustained, for a rudimentary reason that the Tribunal is a creature of the statute and therefore, it can exercise only those powers, which are specifically conferred upon it. The Tribunal, to our minds, has no inherent power to recall judicial orders. (See K.S.Venkataraman & Co.(P) Ltd., Vs. State of Madras, (1966) 60 ITR 112; Martin Burn Limited Vs. R.N.Banerjee, 1958 SCR 514; and Transcore Vs. Union of India, (2008) 1 SCC 125).

21.1.Besides the aforesaid, in our opinion, a clear perusal of Section 254 (2) of the Act, would show that the Tribunal has been vested with the power, to rectify any mistake apparent from the record, both on its own, and also, when a mistake is brought to its notice, either by the assessee or the Revenue. In both cases, the limitation prescribed under the said Section would apply.

22.In order to fully appreciate what we have indicated above, it is necessary, for us, to extract the relevant parts of Section 254 of the Act:

> "254 (1) The Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.
>
> (2) The Appellate Tribunal may, at any time within [six months from the end of the month in which the order was passed][1], with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1), and shall make such amendment if the mistake is brought to its notice by the assessee or the [Assessing] Officer:

Provided that an amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this sub-section unless the Appellate Tribunal has given notice to the assessee of its intention to do so and has allowed the assessee a reasonable opportunity of being heard:

[Provided further xxxxxxxx]

[(2A) xxxxxxxx :

[Provided that the xxxxxxx :

Provided further xxxxxxxxxxx :

[Provided also that xxxxxx]]

(2B) xxxxxxxxx]

(emphasis is ours)"

22.1.A perusal of sub-section (2) of Section 254 of the Act, would show that it supports, what is stated herein above, by us.

23.Insofar as, suo motu power is concerned, it is contained in the first limb of sub-section (2) of Section 254 of the Act, while the second limb of the same provision, confers powers on the Tribunal, to carry out a rectification of mistake, apparent on the record, on it being triggered by an application moved, either by the assessee, or the Assessing Officer, i.e., the Revenue.

23.1.The difference in the language, is brought forth, by use of the expression "may, at any time" in the first limb as against "and shall" in the second limb.

24.As indicated above, qua both situations, the prescribed period of limitation was four years in respect of the assessment year(s) in issue.

24.1.To be noted, with effect from 01.06.2016, the period of limitation has been reduced to six months from the end of the month, in which, the order was passed. The amended period is, admittedly, not applicable in the facts of the instant case.

25.This apart, the proviso, to our minds, has a role to play in the present matter.

25.1.The first proviso clearly indicates, that any amendment made to the order which has the effect of enhancing an assessment or reducing a refund or increasing the liability of the Assessee, shall not be made, under the said sub-section, i.e., sub-section (2) of Section 254 of the Act, unless the Tribunal, gives notice to the Assessee, of its intention to do so and allows the Assessee, a reasonable opportunity of being heard.

25.2.Clearly, the recall of orders dated 20.08.2007 and 21.01.2008, could have the effect of enhancing the liability of the Assessee.

25.3.The Tribunal, therefore, to our minds, was required to issue notice to the assessee, before recalling its orders dated 20.08.2007 and 21.01.2008.

25.4.Thus, for all these reasons, we are of the view that the order dated 31.07.2015, need not be disturbed.

26.As indicated above, the only lapse, if there was any, in the order dated 31.07.2015, was that the Tribunal, did not, formally pass orders on the miscellaneous petitions, filed by the Revenue.

26.1.In our opinion, this by itself, will not impact the impugned judgment and order dated 31.07.2015, as these petitions were filed beyond the period of limitation, as prescribed under Section 254 (2) of the Act.

27.Therefore, for the foregoing reasons, the appeals are dismissed. The impugned judgment of the Tribunal is sustained.

28.However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Income Tax Appellate Tribunal,
   'A' Bench, Chennai.

2. The Commissioner of Income Tax
   (Appeals) III,
   Chennai-34.

3. The Commissioner of Income Tax
   (Appeals) XI,
   Chennai.

4. Joint Commissioner of Income Tax
   Special Range-I, Chennai.

5. Assistant Commissioner of Income Tax,
   Chennai.

+2cc to Mr.T.Ravi Kumar, Advocate, S.R.No.14525/17
+1cc to Mr.Subbaraja Aiyar Padmanabhan,
Advocate, S.R.No.14468/17

T.C.A.Nos.879 to 882 of 2016
And
C.M.P.Nos.20446 to 20448 of 2016

BR(CO)
CS/23/05/17