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

WRIT PETITION NO. 2735 OF 2015

Ms. Nisha Synthetics Ltd. .. Petitioner.
V/s.
The Income Tax Appellate Tribunal
'B' Bench & Others .. Respondents.

Mr. F. B. Andhyarujina, Sr. Advocate with Mr. Mehul Rathod and Mr. M. F. Andhyarujina, for the Petitioner.
Mr. Suresh Kumar with Ms. Samiksha Kanani, for the Respondents.

CORAM: M.S.SANKLECHA, &
A.K.MENON, JJ.
DATE : 30th MARCH, 2016.

P.C:-

This Petition under Article 226 of the Constitution of India impeaches the order dated 12th May, 2015 passed by the Income Tax Appellate Tribunal, (the Tribunal). The impugned order dated 12th May, 2015, rejected the Petitioner's Application for Rectification of order dated 12th October, 2012 passed by the Tribunal in the Petitioner's appeal bearing no. 5549/Mum/2010.

2 Mr. Andhyarujina, learned Senior Counsel appearing on behalf of the Petitioner submits that during the hearing of the regular appeal, leading to the order dated 12th October, 2012, the Petitioner had filed additional documents in the form of two Paper books before the Tribunal as under:-

(a) Paper-book I was with regard to written submissions and various judgments and order passed in the first round of proceedings up to the order of the Tribunal. (The order of the Tribunal in the first round of proceedings had restored the issue to the Assessing Officer for consideration); and

(b) Paper-book-II which was called Additional Paper-book with the title "BEFORE THE INCOME TAX APPELLATE TRIBUNAL, 'B' Bench, Mumbai",containing the order of the Tribunal dated 25th April, 2006 passed in the Petitioner's case for Assessment Year 1996-97 containing pages 1 to 6 and also another Paper-book titled "BEFORE THE COMMISSIONER OF INCOME TAX (Appeals)" filed in the second round of proceedings and not accepted by the Commissioner of Income Tax Appeals [CIT(A)]. This contained pages 1 to 90.

3 It is the Petitioner's contention that none of the documents mentioned in the Paper-book I and II were referred to in the order dated 12th October, 2012 passed in appeal by the Tribunal. In the above circumstances, Petitioner filed a Miscellaneous Application dated 27th November, 2012 before the Tribunal, seeking to rectify the order dated 12th October, 2012 passed by the Tribunal as it had not dealt with/ considered the documents filed as Paper-book I & II.

4 By the impugned order dated 12th May, 2015, on the Rectification Application, the Tribunal accepted the fact that the Paper-book I was filed/ tendered during the hearing, leading to the order dated 12th October, 2012. This Paper-book I contains page Nos. 1 to 40. However, it is an admitted position that the document referred to Paper-

book I would have no bearing to the result arrived at in the order dated 12th October, 2012 passed in appeal. So far as Paper-book II is concerned, the impugned order holds that no such compilation had been filed before it during hearing, leading to the order dated 12th October, 2012. In the above view, the impugned order dismissed the Petitioner's rectification application. It is the non-consideration of the Paper-book II by the Tribunal in the impugned order that causes grievance to the Petitioner. In particular, that part of Paper-book II titled “BEFORE THE COMMISSIONER OF INCOME TAX (Appeals)” and containing pages 1 to 90. So far the first part of Paper-book II containing pages 1 to 6 is concerned, it only has an order of the Tribunal in the Petitioner's own case for Assessment Year 1996-97.

5 The Registrar of the Tribunal has filed affidavit dated 29th March, 2016 – wherein it is stated that on verification of the record, it is found that there was one compilation of Paper-book I containing 40 pages and there was another compilation viz: Paper-book II containing 6 pages – namely order of the Tribunal dated 25th April, 2006 passed in respect of Assessment Year 1996-97. On oath, the affidavit states that no other documents/ Paper-book is available in the record of the case with the Tribunal.

6 Mr. Andhyarujina, learned Senior Counsel appearing for the Petitioner place reliance upon the affidavit dated 9th February, 2016 of one Mr. Shiv Shankar Mishra, Director of the Petitioner. To this affidavit of Mr. Shiv Shankar Mishra is annexed a communication dated 5th February, 2016 from the Advocate who appeared for the Petitioner in the appeal proceedings before the Tribunal, leading to the order dated 12th

October, 2012. The affidavit as well as the letter of the Advocate who appeared in the appeal proceedings (incidentally this Advocate did not appear at the rectification application) states that first compilation of Paper-book I was filed with the Tribunal on 5th June, 2012 and the second compilation of documents called Paper-book II was filed on 22nd September, 2012. The communication from the Advocate who appeared in the appeal hearing before the Tribunal is annexed to the affidavit and he categorically does not state the number of pages which the compilation called Paper-book II contains. Nor does it state that the second compilation of documents Paper-book II was in the two parts viz: one from pages 1 to 6 and another from pages 1 to 90. Moreover, the index to the second compilation of documents Paper-book II also makes no reference of documents being filed along with it containing compilation of pages 1 to 90, which were sought to be filed before the CIT(A).

7 In contrast to the above, we find that the Petitioner has approached this Court by stating on oath that compilation of documents called Paper-book II which contains not only the compilation of documents at pages 1 to 6 but also at pages 1 to 90 which were originally submitted to the CIT(A) was filed.

8 It is very clear from the affidavit filed by the Registrar of the Tribunal that what is available on record of the Tribunal are only two Paper books, and the Paper-book II – only contains the copy of the Tribunal's order dated 26th April, 2010, relating to Assessment Year 1996-97. The communication from the Advocate who appeared in the regular appeal before the Tribunal leading to the order dated 12th October, 2012 also merely states that Paper-book II was filed, however, he does not in

his communication state the number of pages in the Paper-book II.

9 The Petitioner who seeks that this Court exercises its extra ordinary jurisdiction is expected to come clean and not to practice suppresso veri. It is clear from the facts recorded herein above that the Tribunal had no occasion to consider and/or deal with the pages 1 to 90 filed before the CIT(A), which the Petitioner states it a part of the Paper-book II. Therefore, no fault can be found with the impugned order of the Tribunal in refusing to consider those documents as they were never a part of the proceedings which lead to the order dated 12th October, 2012. The proceedings for rectification are not a proceeding to recall the order so as to have the matter re-heard on merits by relying upon the evidence which were never produced before the Tribunal.

10 In the above view, on merits, we find no fault with order of the Tribunal in rejecting the Petitioner's rectification application dated 12th October, 2012 and further taking into account the conduct of the Petitioner, we see no reason to entertain the Petition.

11 Accordingly, **Petition dismissed.** No order as to costs.

(A.K.MENON,J.) **(M.S.SANKLECHA,J.)**