

THE HIGH COURT OF MADHYA PRADESH : JABALPUR
(Division Bench)

Heard through Video Conferencing

Income Tax Appeal No.34/2020

Smt. Seema Bhattacharya ... Appellant

versus

Principal Commissioner of Income Tax II ... Respondent

Appearance:

Shri A.P. Shrivastava with Shri Sapan Usrethe, learned counsel for the appellant.

CORAM :

Hon'ble Shri Justice Sanjay Yadav, Acting Chief Justice

Hon'ble Shri Justice Vijay Kumar Shukla, Judge

Date of decision : **01.12.2020**

ORDER

Per Sanjay Yadav, Acting Chief Justice :-

This Appeal under Section 260A of the Income Tax Act, 1961 (for brevity, 'the IT Act'), is directed against the order dated 07.09.2020 passed by the Income Tax Appellate Tribunal, Jabalpur Bench Jabalpur in M.A. No.04/JAB/2020; whereby, I.T.A. No.225/JAB/2018 dated 07.09.2020 by Revenue was restored.

2. The pleadings and documents on record reveals that the Tribunal in pursuance to Notification issued by the Central Board of Direct Taxes under Section 268A of the IT Act stipulating that the 'tax effect' as computed in terms of Circular 3 of 2018 dated 11.07.2018 being less than 50 lacs, permitted the Department to withdraw the appeal by order dated 23.08.2019. The withdrawal was, however, subject to:

“7. It may be clarified that though every care has been taken by the Registry of the Tribunal in identifying the listed appeals, it may yet be that some error in working the tax effect may have occurred. It may also be that an appeal/s is otherwise saved by the exceptions listed at para 10 (scope of which stands widened vide amendment dated 20.08.2018) or para 11 of the Circular. Similarly, it may be that a CO/s bears an independent ground/s, raised for adjudication. Accordingly, liberty is hereby granted to the parties to, where so, move the Tribunal in this regard, in which case it shall, where satisfied on merits, recall an appeal/s or, as the case may be, a CO/s, for being heard on merits. Further, the recall of an appeal would be accompanied by the recall of the assessee's corresponding CO, if any, dismissed along with. Needless to add, the Tribunal shall, while doing so, which shall be per a speaking order, grant an opportunity of hearing to the other side.

8. In the result, all the appeals of the Revenue and Cross Objections by the assesses stand dismissed.”

3. That, an application under Section 254(2) of the IT Act was filed by the Revenue for recalling the order dated 23.08.2019 and for restoration of Appeal on the sole ground that the Appeal in question qualified exceptional condition specified in para 10(c) of the Board's Circular which mandates that:

“10. Adverse judgment relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above, or there is no tax effect:

- (a) ..., or
- (b) ..., or
- (c) where a Revenue Audit objection in the case has been accepted by the Department, or
- (d)”

4. The Tribunal dwelling on the rival contentions, held:

“In the present case, speaking for all the 96 appeals/COs, no counsels, other than those listed, were present during ‘hearing’. All this is in fact a matter of the Tribunal's record. The claim of proper opportunity having been provided by the Tribunal to the Revenue for raising objection/s, implicit in the charge of it having not raised any objection at the time of hearing, is thus a figment of imagination; the co-author of the impugned order being a constituent of the Bench that heard the matters. There is, accordingly, no reference to any argument, by either side, in the impugned order, much less any mention of

provision of opportunity to raise any specific objection; the Bench making it clear that the listed matters had been so on being identified on the basis of the revised monetary limit *qua* tax-effect per the recently issued Board circular of August 8, 2019, enhancing the same for the maintainability of the Revenues' appeals before the Tribunal.

The impugned order is thus not maintainable on this short ground alone, i.e., non-provision of any opportunity, or in any case proper opportunity, of being heard. The Tribunal, while doing so, was acutely conscious of the legal infirmity of this course; the pitfalls it entailed; and its duty towards the litigants, i.e., the tax payers and the Revenue. Accordingly, keen to avoid any prejudice being caused by proceeding in the manner it does, it, even as made clear earlier in the open court, preempting the raising of any objection by the Revenue, *provided liberty* to the parties to move the Tribunal where any appeal or CO, not covered u/s 268A, has nevertheless been dismissed by it in *limine*.

....

The revenue's applications are thus admissible by the very terms of the impugned order itself, i.e., the liberty provided per the impugned order. Though, therefore, the applications are u/s 254(2), its strict parameters, as normally obtain, would not apply thereto, it is in fact this liberty which makes the said order legally sustainable in view of the short shrift given to the due process of hearing,

fundamental to the judicial decision making process and, thus, to a judicial order. The instant applications, thus, become the first occasion for the Revenue (assessee) to object to its' appeal (CO) being wrongly dismissed u/s 268A, even as contemplated by the impugned order, as well as the order relied upon by it. The Tribunal is thus obliged to consider and decide the Revenue's objection's on merits, as the leave granted per the impugned order itself provides. How, one may ask, does the decision in *Concord Pharmaceuticals Ltd.* (supra) assists the assessee/s under such circumstances; the same, rather, in view of the position of law as clarified thereby, does that of the Revenue. Each of the Revenue's applications are liable to be allowed, restoring the appeals (along with the COs' if any) for being heard on merits, subject to the satisfaction, after hearing the parties, that the appeals are not covered by the extant circular/s."

5. Though the appellant press in service following substantial question of law:

“Under the garb of rectification under Section 254(2), whether Tribunal was justified in recalling the appeal, when appeal was heard in the presence of the appellant and the respondent and when the Tribunal is not vested with power to recall the appeal.”

However, in the given facts of present case, the substantial question as proposed does not arise for consideration.

6. It being the fundamental principle for administration of justice that an act of the Court shall prejudice no man (*actus curiae neminem gravabit*). In the case at hand, as there was no occasion for Tribunal to have considered the merit of ITA No.225/JAB/2018 for AY 2009-10 and the same could not have been dismissed as withdrawn being covered by the exceptional conditions contained in para 10(c) of the Board's Circular, we do not perceive any jurisdictional or legal error in the order as would attract the proposed substantial question of law.

7. Consequently, Appeal fails and is **dismissed**. No costs.

(Sanjay Yadav)
Acting Chief Justice

(Vijay Kumar Shukla)
Judge

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