

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

MA No. 54/JP/2019
(Arising out of ITA No. 859/JP/2016)
निर्धारण वर्ष / Assessment Year : 2011-12

The ITO, Ward-1, Kishangarh.	बनाम Vs.	Shri Kailash Chand Bangur, M/s Arun Marble Traders, 51, Bhati Colony, Jaipur Road, Madanganj, Kishangarh. .
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: ACYPB 0569 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Smt. Rooni Pal (DCIT)
निर्धारिती की ओर से / Assessee by : Shri Sandeep Jhanwar (Adv.)

सुनवाई की तारीख / Date of Hearing : 07/08/2020
उदघोषणा की तारीख / Date of Pronouncement: 10/08/2020

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

By way this Miscellaneous Application the Revenue is seeking recalling of order dated 12.02.2019 of this Tribunal. Due to prevailing COVID-19 pandemic condition the hearing of the appeals are concluded through video conference.

2. The Revenue in the Misc. Application has alleged the mistake in the impugned order as under:-

"In this regard, it is submitted that the Hon'ble Madras High Court while deciding the appeal in the case of Sundaram Finance Ltd. Vs. ACIT [2018] 403 ITR 407 (Madras) held that even assuming that there was defect in the notice, it had caused no prejudice to the assessee and the assessee clearly understood what was the purport and import of notice issued u/s 274 read with section 271 of the Act. The SLP filed by the assessee before the Hon'ble Supreme Court has also been dismissed ([2018] 259 Taxman 220 (SC)). The Id. D/R on the hand tried to justify the order of the lower authorities on the issue', whereas the assessee has not disclosed the correct amount of turnover which was detected during the investigation carried out in case of Shri P.C. Vijayvargiya. The assessee himself admitted the addition made by the AO and therefore, it was known to the assessee that he has concealed the particulars of income. While passing the order, the Hon'ble ITAT has not considered the latest judgment of Hon'ble Madras High Court in the case of Sundaram Finance Ltd., therefore, in the impugned order has been made in this regard which is a mistake in the order."

3. The Id. DR has submitted that this Tribunal while passing the impugned order on the issue of validity of initiation of the penalty proceedings U/s 271(1)(c) of the IT Act has relied upon the judgment of Hon'ble Karnataka High Court in case of CIT vs. Manjunatha Cotton & Ginning Factory 359 ITR 565 as well as dismissal of the SLP filed by the

Revenue by the Hon'ble Supreme Court in case of CIT vs. SSA's Emerald Meadows 73 taxmann.com 241 but this Tribunal has not considered the decision of Hon'ble Madras High Court in case of Sundaram Finance Ltd. Vs. ACIT 403 ITR 407 and the SLP filed by the assessee in the said case was also dismissed by the Hon'ble Supreme Court reported in 259 Taxman 220. Thus, the Id. DR has submitted that there is a mistake in the impugned order as the Tribunal has not considering the decision of Hon'ble Madras High Court and consequently the impugned order be recalled for fresh hearing.

4. On the other hand, the Id. AR of the assessee has submitted that the Tribunal has taken a view by following various judgments including the judgment of Hon'ble jurisdiction High Court in case of Sheveta Construction Co. vs. ITO in ITDB No. 534/2008. Therefore, a view taken by the Tribunal cannot be reviewed in the proceedings U/s 254(2) of the Act only because there is a diversion decision by non jurisdiction High Court. The Id. AR has also referred to a series of decisions of other High Courts as well as this Tribunal wherein a similar view has been taken as taken by this Tribunal in this case therefore, the jurisdiction of the Tribunal U/s 254(2) of the Act does not permit the review of its own order. He has relied upon the decision of Hon'ble Punjab and Haryana

High Court in case of CIT vs. M/s Vardhman Spinning 93 Taxman 453 as well as decision of Hon'ble Delhi High Court in case of Shri Ras Bihari Bansal vs. CIT 170 taxman 31.

5. We have considered the rival submissions as well as relevant material on record. The Revenue has raised a plea in the present Misc. Application that the Tribunal has decided the appeal of the assessee by following decisions of Hon'ble Karnataka High Court as well as other decisions on the point of validity of initiation of penalty proceedings however, there is a judgment of Hon'ble Madras High Court which is in favour of the Revenue. Therefore, non considering of the judgment of Hon'ble Madras High Court amounts to a mistake apparent on record requires rectification. We do not agree with this contention and plea of the Revenue simply due the reason that while deciding this issue the Tribunal has taken a firm view which is supported by various judgments including the judgment of Hon'ble jurisdiction High Court in case of Seveta Construction Co. vs. ITO in ITDB A No. 534/2008. The judgment of jurisdiction High Court is binding on this Tribunal specifically Jaipur and Jodhpur Benches of the Tribunal. The decision of Hon'ble Madras High Court was not relied upon or cited by the Revenue at the time of hearing of the appeal. Further, even in case of divergent view of the

Hon'ble High Courts on a issue the Tribunal is bound by the view taken by the Hon'ble jurisdiction High Court. Hence, the decision which was not cited by the reviewed or relied upon by the Revenue at the time of hearing cannot be a ground for mistake in the order of the Tribunal when the Tribunal has followed the various other decisions of Hon'ble High Courts as well as decision of Hon'ble jurisdiction High Court. It is settled proposition of law that the jurisdiction of the Tribunal U/s 254(2) of the Act is very limited and circumscribed and does not permit any review or revision of its own decision taken on merits. Therefore, we do not find any merit or substance in the Misc. Application of the Revenue, the same is dismissed.

In the result, the M.A. of the Department is dismissed.

Order pronounced in the open court on 10/08/2020.

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 10/08/2020.

*Santosh.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- ITO, Ward-1, Kishangarh.
2. प्रत्यर्थी / The Respondent- Shri Kailash Chand Bangur, Kishangarh.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {MA No. 54/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar