
(2007) 08 MP CK 0037
In the Madhya Pradesh High Court

Ajit Kumar Pitaliya

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 17-08-2007

Acts Referred:

Income Tax Act, 1961 — Section 254(2), 260A

Citation : (2008) 215 CTR 533 : (2009) 318 ITR 182 : (2009) 138 ITR 182 :
(2008) 167 TAXMAN 24

Hon'ble Judges : Manjusha P. Namjoshi, J;A.M. Sapre, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.M. Sapre, J.—This is an appeal filed by assessee u/s 260A of IT Act against an order, dt. 13th Dec., 2006, passed by Tribunal, Indore in Misc. Appln. No. 66/Ind/2006 which in turn arises out of an order, dt. 12th April, 2002, passed by Tribunal in 1TA No. 15/Ind/1999 in relation to asst. yr. 1994-95. 2. By impugned order, the learned Members of Tribunal rejected the application made by assessee u/s 254 (2) of the IT Act as being barred by limitation i.e. 4 years. In other words, the application made by assessee seeking rectification of main order passed in appeal was dismissed as not maintainable because the same was made after expiry of four years from the date of passing of the main appellate order by the Tribunal which was sought to be rectified by invoking the powers of Section 254(2) *ibid*. It is this order of Tribunal which is sought to be impugned by the assessee in this appeal u/s 260A of the Act.

3. So, the question that arises for consideration in this appeal is; whether Tribunal was justified in dismissing the application made by assessee for rectification u/s 254(2) of the Act as being barred by time?

4. Heard Shri M Mani with Shri K.N. Puntambekar, learned Counsel for the appellant (assessee).

5. Having heard learned Counsel for the appellant (assessee) and having gone

through the record of the case, we are of the view that appeal does not involve any substantial question of law within the meaning of Section 260A *ibid* as the view taken by the Tribunal is correct calling no interference in our appellate jurisdiction. It is much more so when we find that no substantial question of law by means of any error in law is noticed.

6. It is not in dispute that Section 254(2) of the Act provides limitation of 4 years for filing an application for rectification of order from the date of order sought to be rectified. This application has to be made by an aggrieved i.e. a party seeking a rectification within four years from the date of the order passed by the authority concerned (as in this case by Tribunal). It is not in dispute that in the present case, the assessee (appellant) did not file the application for rectification within four years from the date of order because admittedly the appellate order of Tribunal was passed on 12th April, 2002 whereas the application for rectification u/s 254(2) of the Act was filed in the office on 24th July, 2006. In order to enable the Tribunal to entertain such application for rectification, it was obligatory upon the assessee to have filed such an application on or before 12th April, 2006. As mentioned *supra*, it was not done because the application was filed after the expiry of four years" period i.e. on 24th July, 2006 (limitation expired on 12th April, 2006).

7. In our view, therefore, the Tribunal committed no mistake in rejecting the application made by assessee on the ground of limitation. In the absence of any provision for condonation of delay in filing such application, the Tribunal had no power to condone the delay. That apart, no such application was also filed by the assessee for condonation of delay and rightly so. In any case, when the Act has not made any provision for condonation of delay in filing such application akin to Section 5 of the Limitation Act, nor any provision was brought to our notice making Section 5 *ibid* applicable to such application, the Tribunal committed no error in dismissing the application once it came to a conclusion that it is filed beyond the period of four years as provided u/s 254(2) *ibid*. We, thus, concur with the reasoning of the Tribunal and accordingly, uphold the same calling no interference.

7.1 Learned Counsel for the appellant (assessee) then vehemently urged that since the application made by assessee for rectification was based on fraud alleged to have been committed in the case and hence, it was above the period of limitation. In other words, in a case of fraud according to learned Counsel, no limitation as such is applicable and hence, such application could be made at any point of time irrespective of limitation period prescribed. He placed reliance on the decisions reported in *United India Insurance Co. Ltd. Vs. Rajendra Singh and Others*, and *Tanna and Modi Vs. Commissioner of Income Tax , Mumbai XXV and Others*, . We do not agree.

8. In the first place, mere use of expression "fraud" in the application does not take the case of assessee outside the purview of Section 254(2) *ibid*. Secondly, whatever may be the ground pleaded for seeking rectification, the same has got

to be brought to the notice of Tribunal within four years from the date of appellate order sought to be rectified for its consideration on merits. Thirdly, no such ground was ever taken by assessee at any point of time either before the AO or before CIT(A) or before the Tribunal in any of the main proceedings arising out of main case on merits. Fourthly, assessee did not choose to prefer any regular appeal u/s 260A of the Act against the appellate order of Tribunal though he could have. It is for all these reasons we cannot entertain such argument which was pressed in service only for the sake of argument rather than of substance. In this view of the matter, law laid down in the two cases relied has no application to the facts of this case.

9. It appears to us that assessee is shrewd (shrewd) enough to obtain surreptitiously some private official letter from the Department written by one authority to other and is now trying to take its advantage for his personal benefits having lost the legal battle on legal points. Learned Counsel for assessee was unable to satisfy us when asked as to how and from where assessee could get photocopy of the official letter when the same was not addressed to assessee by the Department. Their Lordships of Supreme Court in Nandlal Jaiswal's case had criticized such approach of a litigant and had observed that the proper course open to party in such case is to apply to Court for production of original record of the case for Court's perusal rather than to steal the document from the files and then make use of it for his personal gains. We cannot countenance such approach and attitude and manner of assessee in prosecuting the case. He must come to the Court with clean hands.

10. Accordingly and in view of foregoing discussion, which alone is sufficient, the appeal is found to be devoid of any merit. It fails and is dismissed in limine.