(2014) 11 AP CK 0004

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1873, 1924 and 1931 of 2003

Ananda Nilayam APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 12-11-2014

Acts Referred:
Income Tax Act, 1961 — Section 24(1)(x)

Citation : (2015) 370 ITR 370

Hon'ble Judges : L.N. Reddy, J;Challa Kodanda Ram, J

Bench : Division Bench

Advocate : A.V. Krishna Kaundinya, Senior Counsel, Advocate for the Appellant; J.V. Pasad, Standing Counsel, Advocate for the Respondent

Judgement

L. Narasimha Reddy, J.—These three writ petitions are filed by the respondent in I.T.A. Nos. 1694. 1695 and 1696/H/96 on the file of the Hyderabad Bench A of the Income Tax Appellate Tribunal, Hyderabad (for short, the Act).

2. In the returns filed for the assessment years 1990-91, 1991-92 and 1992-93, the petitioner made claim for deduction of certain amounts under Section 24(1)(x) of the Income Tax Act, 1961. The assessing officer did not allow the same. In the appeals preferred by it, the Commissioner of Income Tax (Appeals), Vijayawada granted relief through order dated 13-06-1996. Aggrieved by that, the department filed three appeals referred to above.

3. At one stage, the appeals were scheduled to be heard on 04-07-2001. On behalf of the petitioner, a letter was addressed on 30-06-2001 with a request to adjourn the matters to some other date. The Tribunal acceded to the request and adjourned the appeals to 29-08-2001. On the ground that there was no representation for the petitioner, the Tribunal proceeded to hear the appeals and allowed the same through common order dated 30-08-2001 and the orders passed by the Commissioner in favour of the petitioner were set aside.

4. The petitioner filed M.P. Nos. 1, 2 and 3/Hyd./2003 under Rule 25 of the

Income Tax Appellate Tribunal Rules, 1963 (for short, the Rules), with a prayer to set aside the order dated 30-08-2001. It was pleaded that after the request for adjournment was acceded to, the Tribunal did not intimate any other date for hearing and that for want of information, they could not appear before the Tribunal on 30-08-2001. The petitions were dismissed by the Tribunal through common order 17-04-2002. Hence, these writ petitions.

5. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

6. Rule 25 of the Rules empowers the Tribunal to proceed to hear the appeal even if the respondent before it fails to appear. Therefore, it cannot be said that the Tribunal has committed any illegality. However, the proviso to Rule 25 enables a respondent in an appeal who remained absent and suffered an order, to file an application seeking to set aside the order so passed. In case, the Tribunal is satisfied about the reasons mentioned therein, it can set aside the order passed in the absence of the respondent and hear the appeal afresh.

7. The Tribunal has extracted the letter addressed by the petitioner and mentioned the steps taken thereon. Though it is stated that the date of hearing was adjourned from 04-07-2001 to 29-08-2001, it is not clear as to whether the petitioner was put on notice about the date of hearing. Had it been a case where the adjournment was sought by the counsel being present before the Tribunal and the date was given to him, the necessity to issue fresh notice may not arise. In the instant case, the request for adjournment was made through a letter. Whatever be the justification, the petitioner was awaiting the intimation of the next date of hearing. In the process, the appeals have been heard ex parte and were allowed to the detriment of the petitioner.

8. We are of the view that a case is made out for invoking the discretion of the Tribunal under proviso to Rule 25 of the Rules. Valuable right was accrued to the petitioner on account of the order passed by the Commissioner. Before such valuable right is taken away, the petitioner deserves to be given an opportunity of placing their version before the Tribunal.

9. Hence, the writ petitions are allowed and the order dated 17-04-2002 is set aside. Consequently, the miscellaneous petitions are allowed and the common order dated 30-08-2001 passed by the Tribunal is set aside. The Tribunal shall hear the appeals afresh and dispose of the same in accordance with law. It is made clear the petitioner shall ensure that it is represented before the Tribunal on the date fixed for hearing and if it fails to do so, the Tribunal shall not only proceed to hear the matter, but shall be entitled to reject the applications, if any, filed under Rule 25 of the Rules once again.

10. The miscellaneous petitions pending in this writ petition shall also stand disposed of. There shall be no order as to costs.