
(2009) 05 MP CK 0054
In the Madhya Pradesh High Court

Anil Kumar Agrahari

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 14-05-2009

Acts Referred:

Income Tax Act, 1961 — Section 260A

Citation : (2010) 323 ITR 260

Hon'ble Judges : R.K. Gupta, J; Dipak Misra, J

Bench : Division Bench

Judgement

1. Heard Mr. Sumit Nema, learned Counsel for the appellant and Mr. Sanjay Lal, learned Counsel for the Revenue.

2. The present appeal preferred u/s 260A of the Income Tax Act, 1961, is admitted on the following substantial question of law:

Whether the Tribunal has committed a grave error in rejecting the adjournment application filed by counsel of the appellant/assessee and thereby dismissing the appeal preferred by the appellant/assessee ex parte without adjudicating on the merits of the case and without affording another opportunity of hearing to the appellant/assessee when the paper book filed by counsel of the appellant/assessee already contained the written submissions and the relevant documents were on record before the Tribunal?

3. It is submitted by Mr. Sumit Nema, learned Counsel that the Tribunal should not have dismissed the appeal without adjudicating the appeal on the merits but as the order reflects, there has been no advertance either to the law or the merits of the case.

4. Learned Counsel has commenced us to the decisions rendered in Rajendra Prasad Borah Vs. Income Tax Appellate Tribunal and Others, . Be it noted, the learned single judge in the said case has referred to the decision rendered in Commissioner of Income Tax, Madras Vs. S. Chenniappa Mudaliar, and Rule 24 of the Income Tax (Appellate Tribunal) Rules, 1963, and expressed the view that

the Tribunal could not have dismissed the appeal without advertng to the merits. It is worth noting that the similar view has been expressed by the Division Bench of the High Court of Rajasthan in *Tribhuan Kumar v. CIT* [2007] 294 ITR 401 (Raj).

5. In this context, we may refer with profit to Rule 24 of the Rules which reads as under:

24. Where on the day fixed for hearing or any other date to which the hearing may be adjourned, the appellant does not appear in person or through an authorised representative when the appeal is called on for hearing, the Tribunal may dispose of the appeal on merits after hearing the respondent:

Provided that where an appeal has been disposed of as provided above and the appellant appears afterwards and satisfies the Tribunal that there was sufficient cause for his non-appearance when the appeal was called on for hearing, the Tribunal shall make an order setting aside the ex parte order and restoring the appeal.

6. In view of the aforesaid, we are of the considered opinion that the Tribunal could not have dismissed the appeal without advertng to the merits of the case and hence, we respectfully agree with the decisions rendered by the High Court of Gauhati and Rajasthan. Hence, we set aside the order dated November 24, 2008, passed by the Tribunal and remit the matter to the Tribunal to adjudicate the case on the merits.

7. The appeal is disposed of accordingly. There shall be no order as to costs.

8. C.C. as per rules.