
(1984) 03 AHC CK 0036

In the Allahabad High Court

Case No : CMRA of 1983 in I.T. Ref. No. 128 of 1979

Commissioner of Income Tax

APPELLANT

Vs

R.S. Multani Mal and Sons

RESPONDENT

Date of Decision : 26-03-1984

Acts Referred:

Citation : (1984) 03 AHC CK 0036

Hon'ble Judges : V.K. Khanna, J;H.N. Seth, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

V.K. Khanna, J.—This is an application for recalling the court's order dt. 4-2-1982 returning the reference as un-answered as requisite copies of the paper books had not been filed within the time granted by the court.

2. A reference application by the CIT was filed in this court on 26-3-1979. After the filing of the application, on 13 occasions, i. e., on 2-8-1979, 8-9-1979, 5-11-1979, 11-12-1979, 6-2-1980, 9-4-1980, 10-7-1980, 6-10-1980, 7-2-1981, 21-7-1981, 10-9-1981, 3-11-1981 and 18-12-1981 time for filing paper books varying from some times one month, six weeks and two months was granted. Despite such indulgence being granted by the court, the paper books was not filed for a period slightly less than 3 years. The case was listed before the court on 14-2-1982 when a Bench consisting of Hon'ble Mr. Justice K. N. Seth and Hon'ble Mr. Justice R. K. Rastogi were pleased to pass the following order :

"Time for filing requisite copies of paper book has been granted from time to time since 1979 but the requisite copies of paper-book have not been filed. We are not inclined to grant any further time inspire of the request made by Sri Katju.

It the result, the questions referred to this court are returned un-answered."

After a lapse of more than five months a restoration application dt. 19-7-1982

was filed for "recalling the order dt. 4-2-1982. After the counter and rejoinder affidavits are filed on the restoration application, the same was listed for orders before the court on 2-21-1982 and on the aforesaid date the standing counsel for the IT department prayed for and was granted on month's time to file a supplementary affidavit answering thereto copies of all the letters sent by the counsel for the department to the IT Authorities for taking steps for preparation of paper books. The supplementary affidavit was not filed within the time granted and on 8-3-1983, the Bench granted three weeks and no more for filing the requisite supplementary affidavit. However, on 5-4-1983 the restoration application dt. 19-7-1982 was rejected. The present application in that sense is a second restoration application which has been filed after the expiry of four months from the rejection of the first restoration application.

3. In the present application no prayer has been made for recalling the order passed by the Bench rejecting the first restoration application on 5-4-1983. The only prayer, which has been made in this application is for recalling the order passed by the Bench on 4-2-1982. In the affidavit accompanying the second restoration application in a nutshell the ground taken is that the paper books could not be filed as the letter sent by the department has been misplaced in the office of Sri M. Katju, Id. standing counsel appearing for the department. It has been urged that as the paper books had not been filed and to mistake which had happened in the office of the counsel for the department, the delay in filing the paper books be condoned and the order passed by the Bench returning the reference un-answered be called.

4. The Id. counsel appearing for the assessed has opposed the aforesaid application vehemently and has urged that the second restoration application is not maintainable. On merits also it has been argued that the department has not been able to make out any case for recalling the order passed by this court on 4-2-1982.

5. We have heard Id. counsel for the parties at some length. From the facts which have been stated above, it is true that the present application is in fact, a second restoration, application, the first having already been rejected by a Bench of this court on 5-4-1983. We are, however, not going into the questions as to whether the second restoration application is maintainable or not, or whether there is some delay in filing the restoration application as on the merits of the application itself we are of the opinion that the department has not been able to make out any case for recalling the order dt. 4-2-1982.

6. The order dt. 4-2-1982 had been passed by the Bench when despite granting time on 13 occasions the department had failed to file the requisite number of paper books. Thereafter, a restoration application dt. 19-7-1982 was filed by the department. One notices default of the department in that application a too inasmuch as the requisite supplementary affidavit had not been filed within the time granted by the court. Restoration application dt. 19-7-1982 was rejected on merits by the bench on 5-4-1983. The present restoration application has been

filed after four months of the rejection of the first restoration application and is based on the ground that the clerk of the standing counsel for the department misplaced the letter sent by the department to the counsel which resulted in non-filing of the paper books. If negligence in the office of the counsel for the department was the sole ground for non-filing of the paper books, one could come to the conclusion that the department should not suffer because of the negligence committed in the office of the counsel for the department and the order may have been recalled after compensating the assessed by awarding costs. However, from the entire facts and circumstances of this case it is established that the department itself has been negligent in not placing before the court in the first restoration application the entire facts. In case it is true that the department had sent the necessary paper for preparing the paper books to the standing counsel along with their letter dt. 21-1-1982, there is no reasons why this fact should not have been mentioned in the first restoration application which was filed after 21-1-1982, i.e., on 22-7-1982. One could imagine the lapse of the department in filing the paper books till the order dt. 4-2-1982 was passed as the department after sending the letter dt. 21-1-1982 Along with the requisite papers may have thought that the counsel must have got prepared the paper books and the paper books must have been filed before the court. However, after the rejection of the application on 4-2-1982, the department filed restoration application dt. 19-7-1982. In this restoration application the department ought to have placed the fact which is being put forward in the present second restoration application. By no stretch of imagination it can be said that this fact of sending the letter by the department dt. 21-1-1982 was not within the knowledge of the department itself. The department itself had sent the letter and in the first restoration application this ground should have been taken that because of the lapse in the office of the counsel other hand, one notices that despite time being granted by the court for filing supplementary affidavit the same was not filed. The first restoration application was thus rejected on 5-4-1982. In this second application also no attempt has been made by the department to show as to why this fact was not mentioned in the first restoration application. From the entire facts and circumstances of the case, Therefore, it cannot be said that on merits the department has been able to make out a case for setting aside the earlier orders passed by this court on 4-2-1982 and 5-4-1983.

7. For the reasons stated above, the present application fails and is accordingly dismissed.