(2011) 02 BOM CK 0137

In the Bombay High Court

Case No : Writ Petition No. 2364 of 2010

Indrakumar Patodia — APPELLANT

Vs

Income Tax Officer — RESPONDENT

Date of Decision : 01-02-2011

Acts Referred:

Citation : (2011) 238 CTR 437 : (2012) 211 TAXMAN 38

Hon'ble Judges : Mridula Bhatkar, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : B.L. Gandhi and S.A. Jabbar, instructed by K.C. Pandey, for the Appellant; Suchitra Kamble, for the Respondent

Final Decision : Dismissed

Judgement

J.P. Devadhar, J.—This petition is filed to challenge the assessment order passed on 29th Dec, 2009 u/s 143(3) r/w Section 254(2) of the IT Act and also order passed by the Tribunal on 13th Aug., 2010 thereby rejecting the miscellaneous application filed by the Petitioner.

2. In the original assessment order passed for the asst. yr. 1998-99 additions to the extent of Rs. 77 lakhs were made on account of the failure on the part of the Assessee to produce confirmation letters relating to loans allegedly taken by the Petitioner. The said additions were confirmed by the CIT(A). The Assessee filed further appeal before the Tribunal. During the pendency of the appeal, the Assessee obtained loan confirmation letters from some of the parties and requested the Tribunal to produce the same as and by way of additional evidence. By an order dt. 13th May, 2008 passed in ITA No. 4652/Mum/2006, the Tribunal allowed additional evidence and restored the matter to the file of the AO for consideration of the additional evidence.

3. When the matter was taken up by the AO for consideration of the additional evidence, the Assessee filed some more loan confirmations which were not produced before the Tribunal. The AO declined to consider those loan

confirmations on the ground that the direction of the Tribunal was to consider the specified number of loan confirmations and not beyond. Accordingly, the AO rejected the claim of the Petitioner and passed the assessment order on 29th Dec, 2009.

4. Instead of challenging the said assessment order, the Petitioner filed a miscellaneous application in ITA No. 4652/Mum/2006 seeking modification of the order dt. 13th May, 2008 so that the additional evidence allowed is not restricted to the loan confirmations received during the pendency of the appeal but also to include loan confirmations that were received after the disposal of the appeal. By the impugned order dt. 13th Aug., 2008, the Tribunal rejected the miscellaneous application on the ground that it has no power to review its order dt. 13th May, 2008 so as to allow additional evidence received after the disposal of the appeal on 13th Aug., 2008. The present writ petition is filed to challenge the order dt. 29th Dec, 2009 as well as the order of the Tribunal dt. 13th Aug., 2008 rejecting the miscellaneous application.

5. It is contended on behalf of the Petitioner that once the matter was remanded, the adjudicating authority ought to have permitted all additional evidence, whether received before or after the disposal of the appeal by the Tribunal. Since the AO erroneously declined to consider the additional evidence gathered after the disposal of the appeal, the Petitioner had no option but to move the Tribunal by way of miscellaneous application. In these circumstances, it is submitted that the Tribunal ought to have allowed the miscellaneous application in the interest of justice.

6. In our opinion, the challenge to the assessment order dt. 29th Dec, 2009 cannot be entertained as the Assessee has an alternate remedy of filing an appeal and agitate the issue as to whether the AO was bound to consider the additional evidence other than those permitted by the Tribunal, by filing an appeal.

7. As regards the challenge to the order of the Tribunal in rejecting the miscellaneous application is concerned, in our opinion, no fault can be found with the order of the Tribunal because the Tribunal has no power to review. Once the Tribunal has disposed of the appeal on merits, the Tribunal cannot review its order. Civil Courts have been expressly granted power of review in the Code of Civil Procedure. No such powers are conferred upon the Tribunal under the IT Act. Hence, no fault can be found with the order of the Tribunal in rejecting the miscellaneous application filed by the Petitioner.

8. Strong reliance was placed by the counsel for the Petitioner on the decisions of the apex Court in the case of Board of Control for Cricket, India and Another Vs. Netaji Cricket Club and Others, and Inderchand Jain (D) through L.Rs. Vs. Motilal (D) through L.Rs., . In our opinion, both the aforesaid decisions have no relevance to the facts of the present case, because, those decisions relate to the review power of the Civil Courts under the provisions of the Code of Civil

Procedure. No such provisions are there in the IT Act. Hence, both the aforesaid decisions have no relevance to the facts of the present case.

9. Similarly, reliance placed on the decisions of this Court in the case of Smt. Prabhavati S. Shah Vs. Commissioner of Income Tax, and Sushila Shantilal Jhaveri Vs. Union of India (UOI) and Another, are also misplaced, because, in both the aforesaid cases, the issue was regarding allowability of the additional evidence before the disposal of the appeal by the Tribunal and not after the disposal of the appeal by the Tribunal. Therefore, these two decisions also do not support the case of the Petitioner.

10. In the result, we see no merit in the petition and the same is hereby dismissed with no order as to costs.

