(2014) 11 BOM CK 0146

In the Bombay High Court

Case No : Writ Petitions Nos. 2548, 2722 and Writ Petition (L) No. 2152 of 2014

Supreme Industries Ltd. APPELLANT

Vs

Additional Commissioner of Income Tax RESPONDENT

Date of Decision : 24-11-2014

Acts Referred:
Income Tax Act, 1961 — Section 115JA, 115JB, 254(1), 254(2), 80HHC

Citation : (2014) 369 ITR 758 : (2015) 229 TAXMAN 387

Hon'ble Judges : M.S. Sonak, J;M.S. Sanklecha, J

Bench : Division Bench

Advocate : Percy Pardiwala, Senior Advocate and B.D. Damodar instructed by Kanga and Co, Advocates for the Appellant; A.R. Malhotra, Advocates for the Respondent

Judgement

1. At the request of the counsel for both the sides, these three petitions are being disposed of at the stage of admission itself. The challenge in these three petitions is to a common order dated September 13, 2013, passed Income-tax Appellate Tribunal ("the Tribunal"). By the impugned order, the petitioner''s applications to rectify the order dated May 14, 2010, passed by the Tribunal on a rectification application was dismissed. The order dated May 14, 2010, partly recalled the common order dated January 18, 2008, passed in respect of the assessment years 1999-2000 to 2001-02 on the petitioner''s application for rectification.

2. The petitioner had during three subject assessment years, viz., assessment years 1999-2000, 2000-01 and 2001-02 claimed deduction under section 80HHC and section 80-IB of the Income-tax Act, 1961 ("the Act"), while computing its income under section 115JA/115JB of the Act. The Revenue did not accept the petitioner''s contention. This resulted in the petitioner''s filing an appeal before the Tribunal.

3. In its appeal memo for the three assessment years, the petitioner had specifically urged the aforesaid ground of being entitled to claim deduction under

section 80HHC and section 80-IB of the Act. This is also indicated in the final common order dated January 18, 2008, passed under section 254(1) of the Act of the Tribunal. However after recording the petitioner''s ground as taken up in the appeal memo, the same is not been considered by the Tribunal while disposing of the petitioner''s appeal finally under section 254(1) of the Act by order dated January 18, 2008.

4. The title of the order dated January 18, 2008, while disposing of the three appeals filed by the petitioner as well as the Revenue for the three assessment years reads as under:

5. As the order dated January 18, 2008, of the Tribunal under section 254(1) of the Act did not deal with the petitioner''s contention of being entitled to the benefit of sections 80HHC and 80-IA of the Act, the petitioner filed a rectification application before the Tribunal. However, in the title of the rectification application, the petitioner while seeking to rectify the order dated January 18, 2008, by mistake had referred it as arising out of Income Tax Appeal Nos. 904, 867 and 868/Mum/2005. These three appeal numbers referred to the appeals filed by the Revenue as is evident from the title of the order dated January 18, 2008.

6. By order dated May 14, 2010, the Tribunal allowed the miscellaneous application for rectification filed by the petitioner by recalling the order dated January 18, 2008, to the extent of non-consideration of deduction under section 80HHC and section 80-IA of the Act However, the title of order dated May 14, 2010, by mistake referred to the order dated January 18, 2008, as arising out of Income Tax Appeal Nos. 904, 867 and 868/Mum/2005, i.e., the Revenue''s appeal. The title of the order dated May 14, 2010, reads as under:

7. Thereafter, the petitioner realised that the order dated May 14, 2010, while rectifying the order dated January 18, 2008, which in fact had out of Income Tax Appeals Nos. 906, 907 and 908/Mum/2005 (petitioner''s appeal) and not as mentioned by mistake in the title of the order dated May 14, 2010, as arising out of the income-tax appeal bearing Nos. 904, 867 and 868/Mum/2005 (appeal numbers of the Revenue).

8. In the above view, the petitioner filed an application for rectification/correction of the order dated May 14, 2010. This application was to correct the title of the order dated May 14, 2010, so as to indicate the correct income-tax appeal numbers in the title of the order dated May 14, 2010, as Income Tax Appeals Nos. 906, 907 and 908/Mum/2005 instead of Income Tax Appeals Nos. 904, 867 and 868/Mum/2005 (Revenue''s appeal).

9. By the impugned order dated September 13, 2013, the Tribunal rejected the three miscellaneous application filed by the petitioner, seeking to correct the order of the Tribunal dated May 14, 2010. This dismissal of the rectification application was on the following grounds: (a) a rectification application under section 254(2) of the Act can be entertained only to rectify an order passed

under section 254(1) of the Act and not to correct an error passed under section 254(2) of the Act. In support, reliance was placed upon the decision of the Orissa High Court in Commissioner of Income Tax and Another Vs. Income Tax Appellate Tribunal and Others, and (b) there is no mistake committed in the order dated May 14, 2010, of the Tribunal. In any case, the proceeding under section 254(2) of the Act are meant only for rectifying mistakes apparent from the record committed by the Tribunal and not the mistake of the parties concerned.

10. We find it is an undisputed position that a mistake has occurred in the order dated May 14, 2010, in mentioning Income Tax Appeals Nos. 904. 867 and 868/ Mum/2005 (being appeal numbers allotted to the Revenue''s appeal) instead of Income Tax Appeals Nos. 906, 907 and 908/Mum/2005. However, the impugned order rejected the application for rectification on the ground that such an application is not maintainable under section 254(2) of the Act as held by the Orissa High Court in CIT v. President ITAT (supra).

11. It is a settled position in law that every authority exercising quasi-judicial powers has inherent/incidental power in discharging of its functions to ensure that justice is done between parties, i.e., no prejudice is caused to any of the parties. This power has not to be traced to any provision of the Act but inheres in every quasi-judicial authority. This has been so held by the Supreme Court in Grindlays Bank Ltd. v. Central Government Industrial Tribunal [1980] (Suppl.) SCC 420. Therefore, the aforesaid principle of law should have been adopted by the Tribunal. It is expected from the Tribunal to adopt a justice-oriented approach and not defeat the legitimate rights on the altar of procedures and technicalities. This is particularly so when there is no specific bar in the Act to correct an order passed on rectification.

12. It is fundamental principle of law that no party should be prejudiced on account of any mistake in the order of the Tribunal. Though not necessary for the disposal of this petition, we express our disapproval of the stand taken in the impugned order that section 254(2) of the Act are meant only for rectifying the mistakes of the Tribunal and not of the parties. The Tribunal and the parties are not adversarial to each other. In fact, the Tribunal and the parties normally represented by advocates/chartered accountants are comrades in arms to achieve justice. Therefore, a mistake from any source be it the parties or the Tribunal so long as it becomes a part of the record, would require examination by the Tribunal under section 254(2) of the Act. It cannot be dismissed at the threshold on the above ground.

13. In view of the above, we set aside the impugned order dated September 13, 2013, and direct the Tribunal to pass appropriate order correcting the mistake in its order dated May 14, 2010, for all the three subject assessment years, i.e., 1999-2000, 2000-01 and 2001-02. With the above directions, all the three writ petitions are disposed of. No order as to costs.