Mohan Lal Agarwal Vs. Cit

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Court : Allahabad

Decided On : Jul-08-2003

Reported in : [2004]134TAXMAN230(All)

Appeal No. : Civil Misc. Writ Petition No. 796 of 2003 8 July 2003

Appellant : Mohan Lal Agarwal

Respondent : Cit

Advocate for Pet/Ap. : R.P. Agarwal and V.K. Agarwal, *for the Assessee* Shambhu Chopra, *for the Revenue*

Judgement :
ORDER

Dr. B.S. Chauhan, J.

This writ petition has been filed challenging the impugned order dated 31-3-2003, by which the learned Revisional. Authority, i.e., Commissioner has disposed of the revision application filed by the petitioner-assessee, under section 264 of the Income Tax Act, 1961 (hereinafter referred to as the Act 1961) being aggrieved by the demand contained in letter dated 11-3-2002.

2. Heard S/Shri R.P. Agarwal and V.K. Agarwal, learned counsel appearing for the petitioner and Shri Shambhu Chopra, learned counsel appearing on behalf of the

respondents.

3. While arguing the revision application by the representative of the assessee, it has vehemently been submitted that demand letter dated 11-3-2002 had been issued by the assessing authority without any merit. In memo of revision, the said ground had been taken that it was specifically agitated by the assessee representative. In the impugned order the revisional authority, instead of dealing with it and deciding it on merit, has brushed it aside saying that the issue had not been pressed.

4. It has been submitted that once the ground had been taken in revision and has been agitated before the revisional authority, there was no occasion for the revisional authority to record that the issue had not been pressed, and therefore, it has been submitted by Shri Agrawal. that the petition deserves to be allowed only on this ground.

5. Shri Chopra, learned counsel appearing for the respondents states that if petitioner is aggrieved of the said order of the revisional authority on this issue, he ought to have filed the Review or rectification application before the revisional authority. However, Shri Chopra could not point out any provision in the Act providing for review.

6. In absence of any statutory provision providing for review, the review could not be entertained against a judicial or quasi-judicial order XX at least, rectification application under section 156.

7. In Patel Chunibhai Dajibha v. Narayanrao Khanderao Jambekar : [1965]2SCR328 , the Honble Supreme Court had held that in absence of any power of review, the Tribunal could not have subsequently reconsidered its previous decision and the subsequent order re-opening the matter was illegal, ultra vires and without jurisdiction.

8. In Harbhajan Singh v. Karam Singh : [1966]1SCR817 , the Honble Apex Court has held that in absence of any provision in the Act granting express power of review, it is manifest that review could not be made and the order in review was

ultra vires, illegal and without jurisdiction and the High Court has rightly quashed it by the grant of writ under article 226 of the Constitution.

9. While deciding the said case, the Honble Supreme Court placed reliance on a large number of judgments, particularly in Drew v. Mills (1891) 1 QB 450; Hession v. Johns (1914) 2 KB 421; St. Nazaire Co. In re (1879) 12 Ch.D. 88; and Baijnath Ram Goyanka v. Nand Kumar Singh 14 Indian Appeal 54 (PC), wherein it had categorically been held that the power of setting aside an order, which has been made after hearing the arguments, does not lie unless it is given by the Statute. The court, under the Statute, cannot review an order deliberately made after argument and entertain a fresh argument upon it with a view to ultimately confirming or reversing it. The courts may have limited power only to make a necessary correction if the order, as drawn up, did not express the intention of the court. A party is entitled to assail the judgment only by the mode as indicated in the Statute and in absence of express provision of review, it cannot be entertained for the reason that review is practically the hearing of an appeal by the same officer who decided the case.

10. In Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji AIR 1970 SC 127, the Honble Apex Court held that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication and in absence of any provision in the Act, review of an earlier order is impermissible.

11. In Maj. Chandra Bhan Singh v. Latafat Ullah Khan : [1979]1SCR891 , the Apex Court followed the earlier referred two judgments in Chunibhai (supra) and Harbhajan Singh (supra) and observed that it is well-settled that review is a creature of Statute and cannot be entertained in absence of a provision therefor.

12. In Dr. Smt. Kuntesh Gupta v. Management of Hindu Kanya Mahavidhyalaya : 1987(32)ELT8(SC) , the Honble Supreme Court held as under :

'11. It is now established that a quasi-judicial authority cannot review its own order, unless the power of review is expressly conferred on it by the statute under which it derives its jurisdiction.... In the circumstances, it must be held that the Vice-Chancellor acted wholly without jurisdiction. ... The said order of the Vice-

Chancellor dated 7-3-1987 was a nullity.' (p. 2188)

Similar view has been reiterated by the Honble Supreme Court in State of Orissa v. Commissioner of Land Records & Settlement : AIR 1998 SC3067 .

13. In Krishna Ashram Educational Trust v. District Judge : AIR1995 All415 , after placing reliance upon a large number of judgments of the Honble Supreme Court, this court held that in absence of a provision for review, the authority becomes functus officio after deciding the case and it has no competence to entertain Review Application and change the order passed by it earlier. Nor the order/Award be review under the garb of clarification/rectification/correction.

Therefore, in view of the aforesaid settled legal proposition it can be summarised that in absence of any statutory provision providing for review, entertaining an application for review under the garb of rectification is not permissible.

14. Language used in section 154 of the Act 1961 appears to be verbatim to section 152 of the Code of Civil Procedure (hereinafter referred to as the C.P.C) and in exercise of that power correction is permissible only when it is necessary to give effect to the judgment, decree or order so that the manifest rights of the parties intended to be effectuated by the earlier decision of the court may not be defeated. When decree is not clear as to what was decided and what the court intended, the court may amend it so as to carry out its meaning. (Vide Rai Jatindra Nath Chowdhury v. Uday Kumar Das and Seth Manakchand v. Chaube Manoharlal). This provision cannot be restored to in order to annul the decree or where there is no clerical or arithmetical mistake or error arising from accidental slip or omission or the power cannot be used to redetermination the rights of parties already adjudicated upon. In Dwaraka Das v. State of Madhya Pradesh : [1999]1SCR524 the Honble Apex Court held that powers cannot be used to grant something which had not been granted earlier as it would not amount to accidental omission or mistake. In I.L. Janakirama Iyer v. P.M. Nilakanta Iyer : AIR 1962 SC633 the Apex Court held that as in the decree the mesne profit had been typed as a net profit and it was merely a typographical error in exercise of power under section 152 C.P.C. the word 'net' must be substituted by 'mesne'. The powers of the court are limited only to correct this kind of typographical mistakes. In K.

Rajamouli v. A.V.K.N. Swamy : [2001]3SCR473 the Honble Supreme Court held that if while deciding a case interest pendentelite had not been granted it cannot be granted while allowing the application under section 152 C.P.C. In Plasto Pack Mumbai v. Ratnakar Bank Ltd. AIR 2001 SCW 3426 a similar view has been reiterated observing that power to amend a decree cannot be exercised so as to add to or subtract therefrom any relief granted earlier.

15. In Jayalakshmi Coelho v. Oswald Joseph Coelho : [2001]2SCR207 the Honble Supreme Court placed reliance upon its earlier judgment in State of Bihar v. Neelmani Sahu : (1996)11SCC528 and Bai Shakriben v. Special Land Acquisition Officer : AIR 1996 SC3323 and held that the inherent powers as exemplified in section 152 C.P.C. generally be available to all courts and authorities irrespective of the fact whether the provisions contained under section 152 C.P.C. may or may not strictly apply to any particular proceeding.

But the power to rectification of clerical and arithmetical errors or accidental slips does not empower the court to have a second thought over the matter and to find a better order or decree could or should be passed. There cannot be reconsideration of merits of the matter to come to a conclusion that it would have been better and in the fitness of things to have passed an order as sought to be passed on rectification. On a second thought the court may find that it may have committed a mistake in passing an order in certain terms but every such mistake cannot be rectified in exercise of the courts inherent powers as contained under section 152 C.P.C. It is to be confined to something initially intended to left out or added against such intendment.

16. Similar view has been reiterated in Lakshmi Ram Bhuyan v. Hari Prasad Bhuyan AIR 2002 SCW 4843 issue as the Apex Court held that such powers can be used limited to the extent that a clerical or arithmetical mistake occurred in the judgment, decree or order or error arising therein from any accidental slip or omission can be corrected subsequently by the court either on its own motion or on the application of any of the parties. while deciding the said case, the court placed reliance upon the judgment in Swire, In re (1885) 30 Ch.D 239 wherein it had been held that the said provisions enabled the court to vary its judgment so as

to give effect to its meaning and intention, when the order was passed.

17. Thus in view of the above, we are of the considered opinion that the provision of section 154 of Act 1961 which provide for rectification does not confer such a wide power that it may take within its ambit to reconsider the case. Thus in absence of any provisions providing for review, such a course was not available to the petitioner assessee. As the petitioner has stated on path that the issue has been raised in the memo of revision and has been agitated specifically, there is no reason to disbelieve him and the matter deserves to be remanded to the revisional authority to decide afresh.

There is much dissatisfaction over the other issue also, and it has been submitted by Shri Agarwal that the adjustment under section 143(1)(a) is permissible only with respect to those items which are riot debated in the present case. The adjustment has been made regarding classification of business laws. By considering part of the business laws and speculation law, which according to Shri Agarwal is not permissible in view of section 43(5) of the Act 1961 this being a debatable issue, no adjustment under section 143(1)(h) was permissible.

18. Shri Chopra has vehemently opposed the submission made by Shri Agarwal on this issue. However, we are of the considered opinion that if the issue of competence of issuing the demand letter dated 11-3-2002, which goes to the root of the cause, is decided in favour of the assessee, there will be no occasion to any authority to decide any other issue.

19. Thus without entering into the merit of the case we set aside the order passed by the revisional authority dated 31-3-2003 and remand the case back to be decided afresh after giving opportunity of bearing to the representative of both the parties.

Assessee may apply before the revisional authority for interim relief.

Petition succeeds and is allowed. Impugned order dated 31-3-2003 is quashed.

Order accordingly.