

Commissioner of Income-tax and Another Vs. Income-tax Appellate Tribunal and Another.

Commissioner of Income-tax and Another Vs. Income-tax Appellate Tribunal and Another.

SooperKanoon Citation : sooperkanoon.com/536768

Court : Orissa

Decided On : Nov-20-1991

Reported in : (1992)100CTR(Ori)247; [1992]193ITR377(Orissa)

Appeal No. : O. J. C. No. 2155 of 1991

Appellant : Commissioner of Income-tax and Another

Respondent : income-tax Appellate Tribunal and Another.

Judgement :

A. PASAYAT J. - The short point involved in this writ application is whether the Income-tax Appellate Tribunal, Cuttack Bench (in short 'the Tribunal'), was justified in recalling its order dated November 16, 1989 passed in I. T. A. No. 275/CTK of 1988 in purported exercise of its powers under section 254(2) of the Income-tax Act, 1961 (in short 'the Act').

The background facts are that the aforesaid appeal filed by the assessee before the Tribunal was dismissed by an order dated November 16, 1989. The main point involved in the appeal was whether the net profit rate adopted by the Income-tax Officer for making assessment was justified on the facts and circumstances of the case. The Tribunal referred to certain materials on which reliance was placed by the Assessing Officer as well as by the first appellate authority and held that the

net profit rate of 11.5% as adopted was reasonable. It also took note of the assessee's case. An application styled as one under section 254(2) of the Act was filed by the assessee, along with an affidavit asserting that there was another case which was comparable to that of the assessee and, in that case, a net profit rate of 2.8% was adopted. In the affidavit, it was asserted that though a copy of the order was produced by learned counsel for the assessee, the same was not taken into consideration by the Tribunal while disposing of the appeal. The application was numbered as M. A. No. 15 (CTK) of 1990 and, by order dated December 20, 1990, which is impugned in this writ application, the order was recalled.

The primary challenge of the Department in this writ application is that exercise of jurisdiction under section 254(2) of the Act was uncalled for because there was no mistake apparent from the record which necessitated any amendment and, in any event, it was not open to the Tribunal to recall its order in its entirety, Mr. B. Panda, learned counsel for the assessee however, submits that when relevant materials were placed for consideration by the Tribunal and the same were not considered, it amounted to a mistake which could be rectified by the Tribunal.

In our view, even without entering into a detailed analysis of the legal position, the order impugned cannot be sustained. The Tribunal did not consider the applicability of section 254(2) of the Act and, by an unreasoned order, has disposed of the matter. The affidavit filed by the assessee was termed as 'sufficient proof', without indicating as to what constituted sufficient proof, and also how the same had any relevance to the question of applicability of section 254(2) of the Act. The Tribunal merely quoted the application, prayer and affidavit and abruptly came to the conclusion that it accepted the affidavit as sufficient proof. The power of amendment under section 254(2) of the Act is to be exercised only when there is a mistake apparent from the record. There is no indication in the order regarding any such mistake. No reason has been indicated for exercise of powers under section 254(2) of the Act. The order being non-reasoned is interdicted and unsustainable.

Without being influenced by any observations made herein, the Tribunal shall rehear the matter and consider whether a case for exercise of power under section

254(2) of the Act is made out. We quash the impugned order, annexure 1, and remit the matter to the Tribunal with the aforesaid observations.

The writ application is, accordingly, disposed of. No costs.

S. K. MOHANTY J. - I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com