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Cit Vs. Hemla Hozierly Dyeing and Printing Mills (P) Ltd.

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Court : Delhi

Decided On : Jan-18-2006

Reported in : (2006)201CTR(Del)172

Judge : T.S. Thakur and; B.N. Chaturvedi, JJ.

Acts : [Income Tax Act, 1961](#) - Sections 215(1) and 260A; Income Tax (Appellate Tribunal) Rules, 1963 - Rules 24 and 25

Appeal No. : IT Appeal No. 69 of 2006 18 January 2006

Appellant : Cit

Respondent : Hemla Hozierly Dyeing and Printing Mills (P) Ltd.

Advocate for Def. : None

Advocate for Pet/Ap. : Prem Lata Bansal, Adv

Judgement :

Rule 24 of the ITAT Rules, 1963 inter alias provides that if on the date fixed for hearing, the appellant does not appear in person or through an authorised representative when the appeal was called on for hearing, the Tribunal may dispose of the appeal on merits after hearing the respondent. Rule 25 similarly empowers the Tribunal to dispose of the appeal after hearing the appellant if the respondent does not appear when the appeal is called on for hearing. ITA Nos.

4703 and 4081/1997 which happen to be cross-appeals filed by the revenue and the assessed were heard and disposed of on merits by the Tribunal by its order dated 13-11-2003. A perusal of the said order would show that while ITA No. 4703/1997 filed by the revenue was allowed, ITA No. 4081/1997 filed by the assessed was dismissed. The assessed thereafter moved MA No. 179/2005 seeking recall of the said order and restoration of the appeals. The Tribunal has by the order impugned in this appeal allowed the said application, set aside its order dated 13-11-2003 and restored the appeals for a fresh hearing and disposal in accordance with law. Aggrieved, the revenue has filed the present appeal. The only ground urged before us in support of the appeal is that the Tribunal was not competent to recall the order passed by it on 13-11-2003. It could according to Ms. Bansal only rectify the order but not recall the same in toto. There is no merit in that contention. We say so because proviso to rules 24 and 25 (supra) empowers the Tribunal to set aside an ex parte order and to restore the appeal already disposed of on merits if the appellant or the respondent as the case may be satisfies the Tribunal that there was sufficient cause for his non-appearance when the appeal was called on for hearing. Proviso to r, 24 which is similar to proviso to rule 25 reads as under :

'Provided that where an appeal has been disposed of as provided above and the appellant appears afterwards and satisfies the Tribunal that there was sufficient cause for his non-appearance when the appeal was called on for hearing, the Tribunal shall make an order setting aside the ex parte order and restoring the appeal. '

In the light of the above, no sooner the appellant proved that he had a sufficient cause for non-appearance when the appeal was called on for hearing, the Tribunal was competent to set aside the order and restore the appeal.

2. The Tribunal has in the instant case recorded a clear finding of fact that the notice regarding the hearing of the appeal was not properly served upon the appellant in one appeal and the respondent in the other. In that view, therefore, the non-appearance of the appellant- assessed in the appeal filed by it or in the cross-appeal filed by the revenue was for a sufficient cause. The Tribunal was

accordingly justified in recalling the order passed by it. There is no merit in this appeal nor any substantial question of law arises for our consideration.

Dismissed.

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