

Chief Justice's Court

Case :- CIVIL MISC REVIEW APPLICATION No. - 517 of 2023

Applicant :- Smt. Kulwanti Bhatia Charitable Trust Society

Opposite Party :- Principal Chief Commissioner Of Income Tax And Another

Counsel for Applicant :- Shubham Agrawal

Counsel for Opposite Party :- Gaurav Mahajan

Hon'ble Pritinker Diwaker, Chief Justice

Hon'ble Ashutosh Srivastava, J.

1. Heard Shri Shubham Agarwal, learned counsel for the Review Applicant and Shri Gaurav Mahajan, learned counsel for the Income Tax Department.

2. The instant Review Application has been preferred against the judgment dated 6.10.2023 passed by this Court in Writ Tax No. 1049 of 2023 (Smt. Kulwanti Bhatia Charitable Trust Society versus Principal Chief Commissioner Of Income Tax And Another) seeking review/recall of the order. By order dated 6.10.2023, the writ petition was dismissed finding no merit to the challenge laid to the order dated 31.7.2023 passed under Section 148A(d) of the Income Tax Act, 1961 as well as to the notice dated 31.7.2023 under Section 148 of the Act.

3. Shri Shubham Agarwal, learned counsel for the Review Applicant submits that after hearing the arguments advanced by the parties, the Hon'ble Court had orally observed that the writ petition was liable to be allowed on the basis of the judgment of the Apex Court rendered in the case of ***S.M. Overseas (P) Ltd. versus CIT*** reported in **2023 (330) CTR 106** wherein it has been held that re-assessment proceedings could not be initiated where the rectification proceeding under Section 154 of the Act were pending and the detailed order would follow. The observation was made in presence of Shri Gaurav Mahajan, learned counsel appearing for Income Tax Department. However, it appears that while dictating the judgment inadvertently, reference of the judgment of ***S.M. Overseas*** (supra) has been omitted, leading to the rejection of the writ petition.

4. He submits that the case of the petitioner is squarely covered by the ratio of the decision of the Apex Court rendered in the case of ***S.M. Overseas*** (supra) and as such, the order dated 6.10.2023 is liable to be recalled and the writ petition is liable to be allowed.

5. Shri Gaurav Mahajan, learned counsel appearing for the Income Tax Department submits that the ratio of the judgment of the Apex Court rendered in **S.M. Overseas** (supra) relied upon by the petitioner would be applicable only in the case where the rectification proceedings under Section 154 of the Act were pending. He submits that the rectification application of the petitioner was not pending consideration before the Authority concerned and as such, the petitioner is not entitled for the benefit of the said decision of the Apex Court.

6. The above fact is, however, vehemently disputed by learned counsel for the petitioner, who submits that the rectification application was filed by the petitioner on 6.1.2020 before the respondent No. 2, Deputy Commissioner of Income Tax (Exemption) Office of the Assistant Commissioner of Income Tax (Exemption) Circle, CGO-II, Hapur Chungi, Ghaziabad, 201002 and copy thereof has been filed as Annexure-9 to the writ petition. The said application is stated to have been filed by the petitioner before respondent No. 2 by e-mail. A screenshot of the rectification application filed by the petitioner before respondent No. 2 by e-mail has been brought on record as Annexure-R4 to the review application.

7. Since, the parties are at variance as regards filing of the rectification application, which can be adjudicated only after the exchange of affidavits, this Court deems it appropriate to recall its order dated 6.10.2023 and post the matter for fresh hearing in the week commencing 28.11.2023 before the appropriate Court.

8. Ordered accordingly.

9. The order dated 6.10.2023 stands recalled, writ petition is restored to its original number. It shall be listed before appropriate Court as directed.

Order Date :- 8.11.2023

Ravi Prakash

(Ashutosh Srivastava, J.) (Pritinker Diwaker, CJ)