IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 24.02.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE R.KARUPPIAH

T.C.A. NO. 436 OF 2008

Commissioner of Income Tax
Chennai. .. Appellant

- Vs -

M/s. Thiru Arooran Sugars Ltd.
112, Uttamar Gandhi Salai
Eladarado, V Floor
Chennai 600 034. .. Respondent

Appeal filed under Section 260-A of the Income Tax Act against the order dated 28.9.07 passed by the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai, made in M.P. No.268/Mds/2003 in ITA No.19/Mds/1995.

For Appellant : Mr.Swaminathan

For Respondents : Mr. Vijayaraghavan for
M/s.Subbaraya Aiyar Padmanabhan

JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

Aggrieved by the order passed by the Tribunal in dismissing the appeal filed by it, the appellant/Revenue is before this Court by filing the present appeal. This Court, vide order dated 1.7.08, admitted the appeal on the following substantial question of law :-

> *"Whether in the facts and circumstances of the case, the Tribunal was right in holding that the application for rectification under Section 254, filed well within time becomes infructuous if the Tribunal takes it up for hearing only after the lapse of four years from the date of the order sought to be rectified?"*

2. The facts, in a nutshell, are as follows :-

The Revenue filed Miscellaneous Petition for rectification of the order passed by the Tribunal in ITA No.19/Mds/1995 dated 28.7.03 within the same year. The Miscellaneous Petition was numbered as 268/Mds/2003, but, however, the same was taken up by the Tribunal for hearing only in September, 2007, at which point of time, the Tribunal dismissed the same on the ground that more than four years having elapsed from the date of the order, the said order could not be rectified. In coming to the said conclusion, the Tribunal relied upon the judgment of this Court in the case of ***CIT – Vs - Sri Ayyanar Spinning & Weaving Mills (2008 216 ITR 355 (Mad))***. Aggrieved by the said order, the appellant/Revenue is before this Court by filing the present appeal.

3. Heard Mr.Swaminathan, learned standing counsel appearing for the appellant/Department and Mr.Vijayaraghavan, learned counsel appearing for the respondent/assessee.

4. It is fairly stated by the learned counsel on either side that the

above issue is covered by the decision of the Supreme Court in ***Sree Ayyanar Spinning & Weaving Mills Ltd. - Vs – Commissioner of Income Tax (2008 (301 ITR 434)***. The Supreme Court, in the abovesaid decision, analysing the provisions of Section 254 (2) of the Act, held as under :-

> *"7. By the impugned judgment the High Court came to the conclusion that under section 254(2) the Tribunal could not have allowed rectification beyond four years. That the Tribunal had no power to rectify the mistake after four years which time is set out in section 254(2) itself for passing an order of rectification either suo motu or on an application filed either by the assessee or by the Assessing Officer. The High Court did not go into the merits of the case. The High Court allowed the appeal and set aside the order of the Tribunal only on the ground of limitation. Hence, this civil appeal by special leave.*
>
> *8. In the light of the above controversy, we set out hereinbelow the provisions of section 254(2) of the 1961 Act which read as follows :*
>
> > *"The Appellate Tribunal, may at any time within four years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1), and shall make such amendment if the mistake is brought to its notice by the assessee or the Assessing Officer."*
>
> *9. Analysing the above provisions, we are of the view that section 254(2) is in two parts. Under the first part, the Appellate Tribunal may, at any time, within four years from the date of the order, rectify any mistake apparent from the record and amend any order passed by it under sub-section (1). Under the second part of section 254(2), the reference is*

to the amendment of the order passed by the Tribunal under sub-section (1) when the mistake is brought to its notice by the assessee or the Assessing Officer. Therefore, in short, the first part of section 254(2) refers to the suo motu exercise of the power of rectification by the Tribunal whereas the second part refers to rectification and amendment on an application being made by the Assessing Officer or the assessee pointing out the mistake apparent from the record. In this case, we are concerned with the second part of section 254(2). As stated above, the application for rectification was made within four years. The application was well within four years. It is the Tribunal which took its own time to dispose of the application. Therefore, in the circumstances, the High Court had erred in holding that the application could not have been entertained by the Tribunal beyond four years.

10. In this connection, our attention is also invited to the judgment of the Rajasthan High Court in the case of Harshvardhan Chemicals and Minerals Ltd. v. Union of India [2002] 256 ITR 767 wherein an identical controversy arose for determination and the view taken by that court was as follows (headnote) :

> *"Once the assessee has moved the application within four years from the date of appeal, the Tribunal cannot reject that application on the ground that four years have lapsed, which includes the period of pendency of the application before the Tribunal. If the assessee has moved the application within four years from the date of the order, the Tribunal is bound to decide the application on the merits and not on the ground of limitation. Section 254(2) of the Income-tax Act, 1961, lays down that the Appellate Tribunal may at any time within four years from the date of the order rectify the mistake apparent*

from the record but that does not mean that if the application is moved within the period allowed, i.e., four years, and remains pend ing before the Tribunal, after the expiry of four years the Tribunal can reject the application on the ground of limitation."

11. We are in agreement with the view expressed by the Rajasthan High Court in the case of Harshvardhan Chemicals and Minerals Ltd. [2002] 256 ITR 767.

5. The facts in issue are identical to the facts of the above case. This Court is of the considered view that the abovesaid decision of the Supreme Court is squarely applicable to the facts of the present case. In view of the said decision, the ***substantial question of law is answered in favour of the Revenue and against the assessee***.

6. In the result, the appeal is allowed by way of remand. The matter is remanded back to the Tribunal to reconsider the issue raised in the miscellaneous petition, filed by the Department/appellant, for rectification and decide the same on its own merits.

(R.S.J.) **(R.K.J.)**
24.02.2015

Index : Yes/No
Internet : Yes/No
GLN

To

1. Commissioner of Income Tax
   Chennai.

2. The Income Tax Appellate Tribunal
   'C' Bench, Chennai.

R.SUDHAKAR, J.
AND
R.KARUPPIAH, J.

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