***HON’BLE SRI JUSTICE G. CHANDRAIAH**

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HON’BLE SRI JUSTICE CHALLA KODANDA RAM

+I.T.T.A.No. 54 of 2015

%02-07-2015

#Commissioner of Income-Tax …. Appellant

Vs.

$ The State Bank of India …. Respondent

!Counsel for the Appellant: Sri B. Narasimha Sarma, SC for Income-Tax

Counsel for Respondent:

<Gist :

>Head Note:

? Cases referred:

1) 1995 Supp (4) SCC 541

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JUDGMENT:- (per Hon'ble Sri Justice Challa Kodanda Ram)

This appeal filed by the Revenue under Section 260-A of the Income Tax Act, 1961 (for brevity "the Act") arises out of the Order dated 13.08.2014 in M.A.No. 86/Hyd/2014 in I.T.A.No. 793/Hyd/2007 passed by the Income-Tax Appellate Tribunal, Hyderabad Bench "B", Hyderabad (for short "the Tribunal").

The issue involved in the present appeal relates to the assessment year 2001-2002. Against the orders of the Commissioner of Income-tax, both the Department and the assessee filed appeals in I.T.T.A.No. 793/HYD/2007 and I.T.A.No. 792/HYD/2007 respectively before the Tribunal. So far as the Departmental appeal is concerned, the Tribunal, while dismissing it held that the Department could not prosecute the same without obtaining sanction from the Committee on Disputes (C.O.D) of the Central Government which was held to be mandatory at the relevant point of time in view of the judgment of the Apex Court reported in **Electronics Corp. of India v. Union of India & Ors.**[1] and gave liberty to the Department to seek revival of the appeal after obtaining necessary sanction from the C.O.D., whereas, the assessee's appeal was allowed by the Tribunal on 30.09.2010. Thereafter, the appellant filed Miscellaneous

Application which is numbered as M.A. No. 86/Hyd/2014 on 24.01.2014 seeking to recall the order dated 30.09.2010 made in I.T.A.No. 793/HYD/2007 and the Tribunal dismissed it by order dated 13.08.2014. Questioning this order, the present appeal is filed raising the following substantial question of law said to be arising from the order of the Tribunal for adjudication:

> "In the facts and circumstances of the case, whether the order of the Hon'ble Tribunal (ITAT) is correct in law in rejecting the miscellaneous application filed by the Department holding that it is barred by limitation without appreciating the fact that the Hon'ble Tribunal (ITAT) itself, while passing the original orders had given liberty to approach it for revival of appeals as and when the approval from Committee on Disputes (COD) is received and that the scope for filing miscellaneous application came into existence only after the decision of the Hon'ble Supreme Court in the case of ECIL vs. Union of India reported in 332 ITR 58 (SC) dated 17.02.2011?"

Heard Sri B.Narasimha Sarma, learned Standing Counsel for the Income Tax appearing for the appellant and perused the material placed on record.

It is an admitted fact that even when the matter was taken up by the Tribunal for hearing or even on the date of pronouncement of the order by the Tribunal on 30.09.2010 or even thereafter, no application was made before the C.O.D. seeking its approval to prosecute the appeal. The order of the first appellate authority which is the subject matter of the present appeal is dated 30.04.2007. In normal circumstances, immediately after the order passed by the first appellate authority or within a reasonable time, the appellant ought to have made an application to the C.O.D. seeking permission to prosecute the appeal as it was a mandatory requirement by virtue of the judgment delivered by the Supreme Court (1st cited supra) in Civil appeal No. 1883 of 2011. Admittedly, no application was made. The present Miscellaneous Application came to be filed by the appellant on noticing the judgment dated 17.02.2011 of the Apex Court (1st cited supra) wherein the Apex Court had recalled its earlier order seeking clearance from the C.O.D. and thereby giving liberty to all the Government Departments to approach the higher forums and exercise the right of appeal in accordance with the respective statues. Though this judgment is dated 17.02.2011, the application seeking to recall the order of the Tribunal in terms of the liberty given to the appellant in the order dated 30.09.2010 came to be filed only in the month of January 2014 i.e. after a substantial lapse of the period of three years. In other words, there is a total lapse on the part of the appellant in prosecuting the appeal diligently, and in normal circumstances, the appellant ought to have approached the C.O.D immediately after 30.04.2007. Even after the appellant was made aware of the requirement by 30.09.2010 by the Tribunal, no application was made by him before the C.O.D. In other words, there was never any effort made by the appellant in seriously desiring to prosecute the appeal against the order dated

30.04.2007 passed by the Commissioner. These factors were taken into consideration by the Tribunal while refusing to recall the order dated 30.09.2010. Hence, we do not find any infirmity in the order passed by the Tribunal to interfere with. Even assuming for arguments' sake, it is only on account of the law declared by the Apex Court in the judgment (1st cited supra), dispensing with the requirement of obtaining C.O.D. is taken as starting point, the application made is belated. Further, even on the ground of the absence of diligence shown in approaching the Tribunal to recall the order, we do not find any error in the order of the Tribunal. It may be noted that in taxation matters, a citizen is entitled to have certainty with regard to his or her liability and the issues which were settled long back should not be reopened as it would lead to upsetting the entire financial planning of the individuals who would have accepted orders/judgments as final and arranged their affairs based on the orders/situations prevailing at the relevant point of time.

On the above analysis, the substantial question of law is answered in favour of the assessee and against the Revenue.

Hence, this appeal is devoid of merits and dismissed. No order as to costs.

As a sequel to dismissal of the appeal, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

G. CHANDRAIAH, J

02.07.2015

CHALLA KODANDA RAM,J

Note: L.R. Copy to be marked

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[1] 1995 Supp (4) SCC 541