IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 904 OF 2014

Commissioner of Income Tax-22
Navi Mumbai .. Appellant

v/s.

Shri Suresh G. Wadhwa .. Respondent

Ms. S.V. Bharucha for the appellant
Mr. S.C. Tiwari a/w Ms. Rutuja Pawar for the respondent

CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.

DATED : 5th DECEMBER, 2016.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 4th December, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned dated 4th December, 2013 has allowed the respondent assessee's miscellaneous application for clarification of the order dated 2nd August, 2013 passed under Section 254 (1) of the Act for Assessment Year 2009-10.

2. Admit on the following re-framed substantial question of law.

"Whether on the facts and in the circumstances of the case and in law, the Tribunal had jurisdiction to pass the impugned order

seeking to clarify its earlier order dated 2nd August, 2013 passed under Section 254(1) of the Act?

3. The impugned order of the Tribunal concerns the issue of jurisdiction of the Tribunal to entertain applications for clarification after disposal of the appeal, having far reaching impact. Therefore, the Counsel appearing for the parties request that the appeal itself is taken up for final disposal at this stage. We, therefore, take up this appeal for final hearing.

4. The Tribunal by an order dated 2nd August, 2013 passed an order under Section 254(1) of the Act relating to the Assessment Year 2009-10. According to the respondent assessee, the Assessing Officer was not interpreting / understanding the order dated 2nd August, 2013 correctly. In the above view, the respondent assessee filed an application dated 26th October, 2013 under Section 254(2) of the act seeking clarification of the order dated 2nd August, 2013, so as to explain its correct meaning.

5. By the impugned order, the Tribunal allowed the respondent assessee's miscellaneous application seeking a clarification of its order dated 2nd August, 2013. The impugned order further clarified its order

dated 2nd August, 2013 passed under Section 254(1) of the Act.

6. We find that the Tribunal in the impugned order dated 4th December, 2013 records that under the garb of clarification of an order, a party's right to interpret the Tribunal's order cannot be preempted. If the parties are aggrieved by the interpretation of the Tribunal's order by the lower authorities, it would only be fair to challenge the same in an appropriate proceedings. Notwithstanding the above, the Tribunal yet allows the application by the impugned order clarifying its earlier order dated 2nd August, 2013. This the Tribunal does by holding that though such an application for clarification may not strictly fall under section 254(2) of the Act, yet such an application would be entertained in exercise of its inherent powers and in support relied upon the Apex Court order in ***Honda Siel Power Products Ltd. Vs. Commissioner of Income Tax, 295 ITR 466***.

7. The Tribunal after passing an order under Section 254(1) of the Act has became *functus officio* in respect of the proceedings which led to the final order dated 2nd August, 2013 passed in respect of Assessment Year 2009-10. The Tribunal's powers are for rectification are specifically set out in Section 254(2) of the Act. There is no provision

in the Act enabling the Tribunal to clarify its order after it has became *functus officio* particularly when the clarification is not in respect of clerical / typographical errors which have crept into the order. The Tribunal has no powers of Review. It cannot in the garb of clarifying its order already passed under Section 254(1) of the Act, seek to review the same.

8. The issue is of jurisdiction of the Tribunal to entertain such an application for clarification. Undoubtedly, an inherent power of procedural review is available with every Tribunal but not of substantive review. Procedural review would be cases where the procedure / process of adjudicating the dispute is not followed, to illustrate an order passed ex-parte or when no notice of hearing is received by party, etc. i.e. the process of arriving at justice is vitiated. (see ***Grindlays Bank Ltd. Vs. Central Govt. Industrial Tribunal, 1980 (suppl.) SCC 420***). Seeking clarification and / or amplification of an order already passed without it falling within the parameters of an rectification application, would led to chaos and uncertainty. No order of the tribunal would then be final, as it would always be subject to clarification. Once the Tribunal has passed an order under Section 254(1) of the Act, it becomes *functus officio* and loses jurisdiction over

the lis. It is axiomatic that once a matter is disposed of by the Tribunal / Court, it would be *functus officio*. The Tribunal can only exercise limited jurisdiction as provided in Section 254(2) of the Act, to rectify its order in view of apparent error on record or in case of procedural issues leading to an order passed under Section 254(1) of the Act. Thus, the Tribunal ought not to have entertained such an application on the part of the respondent assessee.

9. The reliance by the impugned order upon the decision of the Apex Court in *Honda Siel Power Products Ltd. (supra)* is inappropriate. In the facts of that case, a binding decision of a co-ordinate bench was cited before the Tribunal during the hearing of the appeal and the same was not considered in the order of the Tribunal. It was in the above context, that the Tribunal had allowed the application for rectification made by the party. However, it was reversed by the High Court. On further appeal, the Apex Court restored the order of the Tribunal. It held that the Tribunal allowed the application applied under Section 254(2) of the Act for rectification as a binding order cited during the hearing before the Tribunal was not considered in the impugned order of the Tribunal. In fact, this would be a case of procedural review as held by the Apex Court in Grindlays Bank (supra) and also fall within

the scope of Section 254(2) of the Act. It must be noted that the Apex Court in Honda Siel Power Product Ltd. (supra) did not exercise inherent powers in the facts before it, but allowed the application under Section 254(2) of the Act. Therefore, the reliance of *Honda Siel Power Product Ltd.* (supra) is misplaced.

10. In the above view, the question as framed is answered in the negative i.e. in favour of the appellant Revenue and against the respondent assessee. The impugned order dated 4th December, 2013 is quashed and set aside.

11. The appeal is dismissed. No order as to costs.

12. The Registry is directed to serve a copy of this order upon the Hon'ble President, Income Tax Appellate Tribunal for his information.

(A.K. MENON, J.) **(M.S. SANKLECHA, J.)**