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

REVIEW PETITION (L) NO. 23 OF 2015
IN
INCOME TAX APPEAL NO. 40 OF 2013

WITH
REVIEW PETITION (L) NO. 20 OF 2015
IN
INCOME TAX APPEAL NO. 1608 OF 2012

WITH
REVIEW PETITION (L) NO. 24 OF 2015
IN
INCOME TAX APPEAL NO. 39 OF 2013

WITH
REVIEW PETITION (L) NO. 19 OF 2015
IN
INCOME TAX APPEAL NO. 1536 OF 2012

WITH
REVIEW PETITION (L) NO. 17 OF 2015
IN
INCOME TAX APPEAL NO. 1537 OF 2012

WITH
REVIEW PETITION (L) NO. 18 OF 2015
IN
INCOME TAX APPEAL NO. 1651 OF 2012

WITH
REVIEW PETITION (L) NO. 21 OF 2015
IN
INCOME TAX APPEAL NO. 1650 OF 2012

The Principal Commissioner	}	
of Income Tax – III, Pune	}	Applicant
versus		
Loknete Balasaheb Desai	}	
Sahakari Sakhar Karkhana	}	
Ltd.	}	Respondent

Mr. Tejveer Singh for the petitioner.

Mr. Rohan Deshpande i/b. Mr. Mihir Naniwadekar for the respondent.

CORAM :- S. C. DHARMADHIKARI &
A. A. SAYED, JJ.
DATED :- OCTOBER 19, 2016

P.C. :- (In Chamber)

1. With the consent of advocates appearing for both sides, we have taken up the review petitions for admission forthwith.

2. Mr. Tejveer Singh submits that the ground for review is set out in paras 3 and 4 and that is that this court, while passing the order under review, relied upon its prior order. The prior order of this court dated 30th June, 2009 passed in Income Tax Appeal No.930 of 2008 was challenged in the Hon'ble Supreme Court of India in Civil Appeal No. 6950 of 2012. That appeal was disposed of by the Hon'ble Supreme Court of India on 25th September, 2012 and a copy of that order is annexed as Annexure 'B'. In these circumstances, in the interest of justice, the order under review be set aside and the appeals be admitted for hearing and final disposal. The subject appeals do raise substantial questions of law, particularly in the light of the observations of the Hon'ble Supreme Court of India.

3. On the other hand, the learned counsel appearing for the respondent would submit that the orders passed by the Hon'ble Supreme Court of India are in specific cases. They may concern one of the questions, but eventually, the Hon'ble Supreme Court of India has directed a remand of the proceedings back to the Commissioner of Income Tax (Appeals). This order of the Hon'ble Supreme Court of India dated 25th September, 2012 was very much available and could have been pointed out when this court passed the order under review. Therefore, merely stating that in the interest of justice the order be reviewed and set aside is not enough. Something more is required in law to enable this court to exercise its review jurisdiction. The learned counsel appearing for the respondent has relied upon a judgment of the Hon'ble Supreme Court of India in the case of *Commissioner of Income Tax, Bombay vs. Krishna Sahakari Sakhar Karkhana Limited*[1].

4. Having heard both sides and perusing the review petitions and the annexures thereto, we see some substance in the arguments of the learned counsel appearing for the respondent. The parameters of review jurisdiction are very well settled under section 114 read with Order 47 Rule 1 of the Civil Procedure Code, 1908, which enable exercise of review jurisdiction. While exercising review jurisdiction, this court is bound by these

1 **(2013) 11 SCC 350**

parameters and principles and one of which is that in the event the court is satisfied that despite due diligence, the material could not be discovered/produced, then alone it can interfere and exercise its powers of review. In the present case, the orders under review are passed much after the Hon'ble Supreme Court order dated 25th September, 2012. There is no averment in any of these review petitions, which would enable us to hold that the order passed by the Hon'ble Supreme Court of India was not known or a copy thereof was unavailable with the counsel for the revenue, who argued the subject appeals. Secondly, if we now entertain the review petitions, we would be required to go behind our own orders and find out whether our conclusion is vitiated on account of some order of the Hon'ble Supreme Court of India entertaining purportedly identical questions. In such circumstances, in the garb of review we cannot exercise appellate powers.

5. The review petitions are devoid of merits and are dismissed. There would be no order as to costs.

(A.A.SAYED, J.) **(S.C.DHARMADHIKARI, J.)**