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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2426 OF 2016

Paras Organics Private Limited ..Petitioner
Versus
The Union of India & 2 Ors. ..Respondents

....
Mr. D. V. Gandhi a/w Mandar Vaidya for the Petitioner.
Mr. Suresh Kumar a/w Ms. Samiksha Kanani for the Respondents.
....

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

DATE : 18th NOVEMBER, 2016

P.C.:

1. This petition under Article 226 of the Constitution of India takes exception to the order dated 17th June, 2016 passed by the Income Tax Appellate Tribunal (the Tribunal). By the impugned order dated 17th June, 2016 the Tribunal dismissed the petitioner's application under Section 254(2) of the Income Tax Act, 1961 (the Act) seeking rectification of the order dated 26th October, 2015.

2. The petitioner's grievance is that the impugned order dated 17th June, 2016 has not dealt with the petitioner's contention in its application for rectification. The application for rectification before the Tribunal made a grievance that the order dated 26th October, 2015 incorrectly

records that the assessee was unable to substantiate its claim with documentary evidence. This inspite of the fact that the necessary paper book available before the Tribunal would establish/substantiate the stand of the applicant-assessee.

3. We find that the order dated 26th October, 2015 states that it was pronounced in open Court in the presence of the learned representative from both sides at the conclusion of hearing on 26th October, 2015. The above fact is not disputed in the rectification application. Therefore, if any facts were being incorrectly recorded, the objection to the same could have been raised for consideration of the Tribunal at the time i.e. when the order was dictated. Further the portion of the order with which the petitioners have made a grievance is reproduced in the rectification application clearly records that the petitioner-assessee was unable to substantiate its claim with documentary evidence. It does not state that no documentary evidence was filed before the Tribunal after negativing the submission of the petitioner that no sufficient opportunity to lead its evidence was given by the lower authorities to the petitioner. It only concludes that the documentary evidence relied upon before it does not substantiate the claim of the petitioner. One more fact which is to be noted is that from the order on record it is not at all clear whether or not any emphasis was placed during the course of the hearing on the

document which formed a part of the paper book which the petitioner now seeks to rely upon. This is evident from the fact that the person who appeared on the hearing leading to the order dated 26th October, 2015 is not the person who appeared at the time of the hearing of the rectification application on 17th June, 2016. Further the rectification application itself deposes to certain facts which allegedly transpired during the hearing of the appeal and those facts have been deposed by the Managing Director of the petitioner company even without indicating that he was present at the hearing. This was necessary in view of the fact that the rectification application specifically states that during the course of the hearing one of the two members had glanced at the page nos.33 and 34 of the paper book which according to the petitioner substantiates its case.

4. Moreover, if the attention of the Tribunal was invited to page nos.33 and 34 to the paper book then both the members of the Tribunal would have had occasion to look at the document. Therefore it appears that the documents being relied upon from the paper book in the rectification application were not brought to the notice of the Tribunal during the hearing of the appeal. The impugned order while disposing of the rectification application states that the factual matrix was considered and conclusion was arrived at on the basis of the facts placed before them. The attempt on the part of the petitioner is to seek a review of the order

so as to ensure that the Tribunal takes a look at the documents which were part of the record and may not have emphasized by the petitioner during the course of the hearing. All this must be considered in the context of the Tribunal recording in its order that the primary submissions of the petitioner was inadequate opportunity to present its case before the lower Authorities. This fact has not in terms been disputed in the rectification application. Moreover, it needs to be pointed out that today we have by a separate order in Notice of Motion No.2513 of 2016 in Income Tax Appeal No.1115 of 2016 have condoned the delay in filing the appeal under Section 260A of the Act from order dated 26th October, 2015 of the Tribunal. In that appeal before the Tribunal we note that an additional ground taken up viz. of not being afforded sufficient opportunity by the lower authority to explain its case.

5. In the above view, the impugned order dated 17th June, 2016 passed by the Tribunal rejecting the petitioner's application for rectification cannot on the present facts be found fault with.

6. Accordingly, the Petition is dismissed. No order as to costs.

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

Wadhwa