THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

ITTA.No.104 of 2016

JUDGMENT: (per Hon'ble Sri Justice Ramesh Ranganathan)

This appeal, under Section 260-A of the Income Tax Act, 1961 (for short "the Act') , is preferred against the order passed by the Income Tax Appellate Tribunal, Hyderabad in M.A. No.103/Hyd/2014 in ITA.No.295/Hyd/2012 dated 10.12.2014 for the assessment year 2008-09. The respondent herein filed M.A.No.103/Hyd/2014 seeking recall of the order of the Tribunal in ITA.No.295/Hyd/2012 dated 07.03.2013 whereby the Tribunal set aside the order passed by the Commissioner of Income Tax (Appeals) on merits.

In its order in ITA.No.295 of 2012 dated 07.03.2013 the Tribunal had noted that the assessee had appeared in person, and had sought an adjournment but they had required the assessee to argue the matter. After referring to the arguments of the authorised representative before the Commissioner of Income Tax (Appeals), the Tribunal dismissed the appeal filed by the assessee recording that the assessee had also filed written submissions after hearing the appeal which was kept on record, but had not been admitted and considered.

The respondent-assessee filed M.A.No.103/Hyd/2014, under Section 254(2) of the Act, seeking rectification of the earlier order passed by the Tribunal. In the order under appeal, the Tribunal noted that the matter could not be presented satisfactorily before them earlier as the assessee's representative was not in India, and could not appear before them on the date of hearing; the issue was decided without considering the facts with reference to (i) application of the decision of the case of ***Smt. Gousia Begum and others*** (ITA.No.1024/Hyd/2011); and (ii) entitlement of the petitioner to relief under Section 54F as his funds had gone into the construction of a building; the written submissions filed by the assessee was also not considered; there were certain errors in the order; and, as the reasons advanced by the learned counsel for the assessee were satisfactory, the earlier order was being recalled and the assessee's appeal was being restored to file.

It is evident from the order under appeal that, though the assessee had engaged a counsel to appear on his behalf, his counsel was not in India, and could not, therefore, appear before the Tribunal. The earlier order of the Tribunal also records the assessee's request for adjournment. It also appears from the order passed by the Tribunal, under Section 254(2) of the Act, that the assessee was claiming deduction under Section 54F of the Act on the ground that funds had gone into the construction of a building, and as these questions necessitated elaborate examination, the Tribunal recalled its earlier order and restored the appeal to file.

The jurisdiction which this Court exercises, under Section 260-A of the Act, is only on a substantial question of law. The jurisdiction exercised by the Tribunal under Section 254(2) of the Act in recalling its earlier order and restoring the appeal to file, in the facts and circumstances of the present case as noted hereinabove, does not give raise to a substantial question of law necessitating interference in this appeal.

The appeal fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date: 29.06.2016

JSU

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

<u>THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY</u>

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