

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Review No.102 of 2009

M/S D. N.SINGH, a partnership firm having its place of business at Sunil Bhawan, Mohanpur, Punaichak, P.O. and P.S. Shastrinagar in the town and district of Patna through its partner Sri Dudheshwar Nath Singh
... Appellant ... Petitioner/s

Versus

1. The Commissioner Of Income Tax, Central, Patna
2. The Assistant Commissioner of Income Tax, Central Circle 4, Patna

... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Y. V. Giri, Sr. Advocate Mr. Sanjeev Kumar, Mr. K.C.K. Sinha, Advocates
For the Respondent/s	:	Mrs. Archana Sinha, Sr. Standing Counsel Mr. Sanjeev Kumar Mr. Alok Kumar, Jr. S.C.

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 18-12-2017

Heard parties.

This review application is directed against the judgment dated 05.03.2009 passed by a Division Bench of this Court in M.A. No.214 of 2002, whereby and whereunder, the Division Bench had dismissed the appeal filed by the review petitioner. The review petitioner preferred M.A. No.214 of 2002 against the order



dated 11.01.2002 passed by the Income Tax Appellate Tribunal, Patna Branch, Patna in ITA No.240/Pat/2001 for the assessment year 1995-96 reversing the order passed by the CIT(A)-II, Patna in ITA No. 166/PAT/A-II/99-2000 dated 18.12.2000.

The genesis of the dispute is return filed by the assessee on 31.10.1996 disclosing total income of Rs.5,76,133/- from the carriage contract. The case was selected for scrutiny and notices under Sections 143(2) and 142(1) of the Income Tax Act were issued. The assessing officer, after hearing the assessee, came to the conclusion that he is required to further pay a sum of Rs.1,04,72,720.30 which was value of bitumen short supplied by the assessee to the Road Construction Department, Government of Bihar. The assessee preferred appeal before the Commissioner (Appeals) against the aforesaid order of the assessing officer which was allowed vide order dated 18.12.2000 and aforesaid additional sum was deleted. The revenue preferred appeal before the Patna Bench of the Income Tax Tribunal against deletion of the additional sum towards value of bitumen short supply. The assessee also filed cross-objection. The Tribunal on appraisal of the materials available on record came to the following conclusions:-

“In pursuance of the said show-cause notice, the assessee filed photocopies of delivery



challans, claiming that it had made full delivery to the respective divisions. While adjudicating the appeal In ITA No.358(Patna)2000 decided on 11.012002, we had an opportunity to appreciate the facts in this regard. We formed an opinion that the photocopies of the delivery challan were false and fabricated. We further came to the conclusion that the admission made by various junior engineers, was clarified and the explanation made by them was that bitumen supplied was short and the delivery was not in consonance with the orders, on the strength of which the goods were lifted from the various companies located at Haldia. Here in this case too the assessee nowhere disputes the quantity of the goods lifted by it from various companies at Haldia. It has not been disputed that bitumen weighing 10000.77 I.T. was lifted by it from Haldia. Its claim that full supply was made stands demolished when photocopies of delivery challans were found to be false and fabricated. All Executive Engineers asserted that delivery to the tune of 8206.2 MT of bitumen was made to their respective divisions. They had confirmed non-delivery to the tune of 2090.40 MT by the assessee. In such a situation the Act was justified in adding a sum of Rs.1,04,71.720 to the income of the assessee under the provisions of Section 69A of the Act.”

Aggrieved by the aforesaid, the assessee, i.e., the review petitioner preferred miscellaneous appeal under Section 260 A of the Income Tax Act, 1961. On appraisal of the materials on record,



following substantial questions of law were formulated by the court.

1. “Whether on the facts and in the circumstances of the appellant’s case confirmation of addition u/s 69A amounting to Rs.1,04,71,720 is legal and valid?

2. Whether the addition amounting to Rs.1,04,71,720 could at all be sustained in absence of condition precedent for invoking Section 69A of the I.T. Act?

3. Whether the Tribunal is justified in sustaining the addition of Rs.1,04,71,720 u/s 69A on account of short supply of bitumen in the hands of the appellant who is merely a transporter of the goods?”

The questions were answered in favour of revenue and against the appellant/review petitioner.

Now, the present application has been filed for review of the judgment passed in appeal.

First of all, several decisions were cited by Mr. Y. V. Giri, learned Sr. counsel appearing for the review petitioner regarding ambit and scope of the review of the appellate order under the Income Tax Act. For example **Patel Narshi Thakershi and others V. Pradyumansinghji Arjunsinghji [AIR 1970 Supreme Court 1273]**, **Naresh Shridhar Mirajkar V. State of Maharashtra and**



another and other analogous matters [AIR 1967 Supreme Court 1], M. M. Thomas Versus State of Kerala and another [(2000) 1 Supreme Court Cases 666] and Commissioner of Customs and Central Excise Versus Hongo India Private Limited and another [(2009) 5 Supreme Court Cases 791].

So far maintainability of the review application is concerned, the Full Bench of this Court vide order dated 26.04.2010 passed in this review application itself has held that the High Court, being the court of superior jurisdiction and a Court of record, can entertain application for review arising out of judgment passed under Section 260 A of the Income Tax Act.

A question arose that what would be the ambit and scope of such review. Whether it can be equivalent to the jurisdiction exercised by the court in appeal? The Hon'ble Supreme Court in **Usha Bharti Versus State of Uttar Pradesh and Others [(2014) 7 Supreme Court Cases 663]** has held that in exercise of power of review, the High Court can even reopen the case and rehear the entire matter but such power cannot be oblivious of the provisions contained in Order 47 Rule 1 CPC and the rules framed by the High Courts. Their Lordships quoted paragraph 19 from the judgment of the Apex Court rendered in **S. Nagaraj V. State of Karnataka [1993 Supp (4) SCC 595]**. It has been held therein



that review literally and even judicially means re-examination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Similar view has been taken by the Hon'ble Supreme Court in yet another decision rendered in **Sasi (Dead) through legal representatives Versus Aravindakshan Nair and Others [2017(4) Supreme Court Cases 692]**. It has been held, referring the earlier decision rendered by the Apex Court, that a review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error. Almost similar view has been taken by the Hon'ble Supreme Court in other decisions also. The Division Bench has laid down its clear view on each question of law which was formulated after considering the submissions made and the decisions cited on behalf of the appellant.

Mr. Y. V. Giri, learned Sr. counsel appearing for the review petitioner has tried to impress upon this Court that conclusion reached by the Division Bench was wrong and on the



basis of the facts and the materials available on record, the Court should have reached to another conclusion.

In our view, this is not the ambit and scope of the review. It has been held by the Apex Court in **Sasi (Dead) through legal representatives (Supra)** that a review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error apparent on record.

Much emphasis was laid by learned counsel for the review petitioner that the appellate tribunal, in separate appeals filed by the review petitioner itself, however, for the different assessment years has taken a different view in both the appeals. It is stated that for the assessment year 1996-97, on the same set of facts, it has allowed the appeal on the same date, whereas, for the year 1995-96 it has remanded back the matter to the assessing officer.

However, the question would be whether the fact that the appellate tribunal had passed another order correctly or incorrectly, the same may have any effect rendering the judgment of the tribunal passed in present matter to be erroneous despite the same having been upheld in appeal by this Court? Answer has to be in negative. For the assessment year 1995-96, matter has attained finality as the Division Bench has already accepted the view of the



appellate tribunal to be correct in M.A. No.214 of 2002. The view of the same Tribunal or the same Bench of the Tribunal was correct or incorrect for a different assessment year was not the subject matter of the appeal. If one of the views of the appellate tribunal is in favour of the assessee that does not mean that the said view would be correct and the view taken in the present case was incorrect. The view formed by the revenue in the present case for the assessment year 1995-96 has been scrutinized not only by the appellate tribunal but also by the Division Bench of this Court and the same has been found to be correct.

Thus, in our view, that cannot be held to be a patent error on the face of the record, thus, the same would not come to the help of the review petitioner. We could not be persuaded to reverse the finding recorded by the Division Bench for the reason that for the same assessee but for the different assessment year, same Bench of tribunal has accepted their plea regarding short supply of bitumen as it is not within the knowledge as to whether that case travelled in appeal before this Court or not, whereas, the decision rendered by the appellate tribunal for the assessment year 1995-96 travelled up to this Court in M.A. No.214 of 2002. The substantial questions were formulated and all of them have been answered against the assessee.



As a result, this review application, being devoid of merit,
fails and is, accordingly, dismissed.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
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