IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION (REVIEW) NO. 26 OF 2010
IN
TAX APPEAL NO. 7 OF 2004

THE COMMISSIONER OF INCOME TAX,PANAJI GOA. ... Applicant

Versus

M/S AUTO MOBILE CORPORATION OF GOA LTD.,SATTARI ... Respondent

Ms. Susan Linhares, Junior Standing Counsel for the Applicant.
Shri J. Supekar, Advocate for the Respondent.

Coram:- F. M. REIS & NUTAN D. SARDESSAI, JJ.

Date:- 29th March, 2017

ORAL ORDER :

Heard learned Counsel for the parties.

2. The above petition seeks for review of the order dated 25/08/2010 whereby the appeal preferred by the applicant/Revenue came to be disposed off in view of the judgment reported in 2005 (5) Bom.C.R. 41 in the case of Commissioner of Income Tax V/s. Pithwa Engineer Works, on the assumption that the tax effect was below Rs.2.00 lakhs as covered by the circular of the Central Board of Direct Taxes. The said order was passed on the concession by the learned Counsel appearing for the Revenue that the tax effect was below

the limit prescribed in the said circular.

3. The applicant filed the above review petition essentially on the ground that the statement of the concession of the learned Counsel was not correct as according to the applicant, the tax effect was much more than the amount fixed in the said circular as according to them the recurring consequences in terms of para 3 (clauses c and d) of the circular were not considered when such concession was given by the learned Counsel. The application for review came to be dismissed by oral order dated 28/03/2012 essentially on the ground that review was not maintainable in an appeal under Section 260-A of the Income Tax Act. The applicant/Revenue preferred Special Leave Petition before the Apex Court which came to be allowed by judgment dated 12/08/2016 whereby the said oral order passed by this Court was quashed and set aside and the matter was remanded to decide the review petition afresh.

4. During the course of the hearing of the above petition, Shri Supekar the learned Counsel appearing for the respondent points out that the appeal itself would not be maintainable in view of the subsequent circular issued by the Central Board of Direct Taxes dated 10/09/2015. The learned Counsel has also placed on record the calculations to point out that the claim of the applicant of notional recurring taxes would not at all be attracted in the

present case. The learned Counsel appearing for the applicant/Revenue however disputes the said contention and according to the learned Counsel the tax effect involved in the above appeal is much more than the amount of Rs.20.00 lakhs and, as such, the matter has to be examined. We do not intend to examine the said rival contentions as this aspect would have to be considered only after the above review petition is examined and decided by this Court. The order under review admittedly is not on the basis of the subsequent circular which came into force only in December, 2015 but on the basis of the circular which was issued in the year 2008.

5. As such, as the appeal preferred by the applicant/Revenue was disposed off based on the concession of the learned Counsel, which apparently is alleged to be a misappreciation of the relevant position of law at the relevant time, we find that there is an error apparent on the face of record which would call for review of the order dated 25/08/2010.

6. In view of the above, we pass the following order:

O R D E R

(i) The application for review is granted.

(ii) The order dated 25/08/2010 stands reviewed and the Tax Appeal is placed on the board of final hearing.

(iii) Needless to say all the contentions of the respondent on merits as well as the contention that the appeal cannot proceed in view of the subsequent circular of the year 2015 of the Central Board of Direct Taxes are left open.

(iv) Review application stands disposed off accordingly.

NUTAN D. SARDESSAI, J. F. M. REIS, J.

NH