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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2889 OF 2016

Otters Club ..Petitioner

Versus

Director of Income Tax (Exemptions)
Mumbai & Ors. ..Respondents

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Mr. P. Kaka, Senior Advocate, a/w Manish Kanth i/b. Atul Jasani for the Petitioner.
Mr. Suresh Kumar for the Respondents.

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

DATE : 12th JANUARY, 2017

P.C.

1. This petition under Article 226 of the Constitution of India challenges the order dated 30th September, 2016 passed by the Income Tax Appellate Tribunal (Tribunal) under Section 254(2) of the Income Tax Act, 1961 (the Act). The impugned order dismissed the petitioner's application for rectification of its order dated 3rd February, 2016 passed under Section 254(1) of the Act relating to A.Y. 2009-10.

2. The petitioner's grievance before us as also raised before the Tribunal are twofold:

(a) The order dated 3rd February, 2016 was passed beyond a period of 90 days after the hearing of the appeal was concluded on 22nd September, 2015. This was in breach of Rule 34(5)(c) of the Income Tax Appellate Tribunal Rules, 1963 (Tribunal Rules) as also of the binding decision of this Court in ***Shivsagar Veg. Restaurant v/s. ACIT 317 ITR 433***. Further this delay has also resulted in prejudice to the parties as binding decisions of the co-ordinate benches though referred to were ignored in the order dated 3rd February, 2016.

(b) Consequent to the order dated 3rd February, 2016 passed under Section 254(1) of the Act, the jurisdictional High Court on an identical issue in the case of ***DIT(E), Mumbai v/s. Maharashtra Housing and Area Development Authority (Income Tax Appeal No.2174/2013)*** rendered on 18th April, 2016 has decided the issue arising herein in favour of the petitioner-assessee. It is submitted subsequent decisions of jurisdictional High Court would warrant of rectification of earlier orders as held by the Apex Court in ***ACIT v/s. Saurashtra Kutch Stock Exchange Ltd. 305 ITR 227.*** Therefore it is submitted that the Tribunal ought to have exercised its jurisdiction and allowed the rectification application.

3. The impugned order of the Tribunal while rejecting the rectification

application does not dispute the fact that the order dated 3rd February, 2016 passed under Section 254(1) of the Act was passed beyond the period of 90 days from the date of conclusion of its hearing on 22nd September, 2015. However, it records that administrative clearance had been taken to pass such an order beyond the period of 90 days. We are at a loss to understand what is meant by 'administrative clearance' and the basis for the same. Besides when, how and from whom the administrative clearance was received, are all questions still at large. Mr. Suresh Kumar, the learned counsel who appears for all the respondents, including the Registry of the Tribunal is unable to shed any light on the same. Moreover, we are unable to comprehend the meaning of 'Administrative clearance' in the face of Rule 34 (5)(c) read with Rule 34(8) of the Tribunal Rules. It is clear that the above provisions mandate the Tribunal to pronounce its order at the very latest on or before the 90th day, after the conclusion of the hearing. In fact, this Court in Shivsagar Veg. Restaurant (supra) after referring to various decisions of the Apex Court directed the President of the Tribunal to frame guidelines to prevent delay in delivery of orders/judgments. It also directed all the revisional and appellate authorities (including Tribunal) under the Act to decide the matters heard by them within a period of three months from the date of the conclusion of the hearing. This is further compounded by the fact that the submission of the petitioner in respect of the entire issue being covered by orders of co-ordinate benches was according to the petitioner, lost sight of while passing the order dated 3rd February, 2016.

4. In the above view, the impugned order rejecting rectification application has not considered the aforesaid Rules and the binding decisions of this Court. Therefore on the aforesaid ground alone, the impugned order is not sustainable.

5. So far the second issue viz. rectification of the order passed under Section 254(1) of the Act on the basis of a subsequent decision of the jurisdictional High Court in Maharashtra Housing and Area Development Authority (supra) is concerned, the impugned order does not deal with it in the impugned order. In any case, as on the first issue itself we are setting aside the impugned order and restoring the issue to the Tribunal to consider the rectification application as such, this issue would be considered by the Tribunal while disposing of the rectification application in the context of Saurashtra Kutch Stock Exchange Ltd. (supra) which has approved the view of the Gujarat High Court in ***Suhrid Geigy v/s. Commissioner of Surtax 237 ITR 834.***

6. In the above view, we set aside the impugned order dated 30th September, 2016 passed under Section 254(2) of the Act and restore the petitioner's Misc. Application dated 30th April, 2016 to the Tribunal for fresh consideration and disposed of in accordance with law. All contentions kept open.

7. Accordingly, the petition is disposal of in above terms. No order as to costs.

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