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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 04.05.2018

+ **W.P.(C) 4742/2018 & CM APPL.18248-18249/2018**

DR. PRANNOY ROY

..... Petitioner

versus

THE DEPUTY COMMISSIONER OF INCOME-TAX & ORS.

..... Respondents

W.P.(C) 4743/2018 & CM APPL.18250-18251/2018

SMT. RADHIKA ROY

..... Petitioner

versus

THE DEPUTY COMMISSIONER OF INCOME -TAX & ORS.

..... Respondents

Present: Mr. Sachit Jolly, Mr. Rohit Garg, Mr. Siddharth Joshi and Mr. Aarush Bhatia, Advocates for the petitioner in both the matters.

Mr. Asheesh Jain, Senior Standing counsel with Mr. N.P. Sahni, Advocate for the respondents in both the matters.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A.K. CHAWLA

HON'BLE MR. JUSTICE S. RAVINDRA BHAT (ORAL)

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Issue notice. Mr. Asheesh Jain, Sr.Standing counsel and Mr.Sahni, Advocate appear and state that the petitions can be disposed of at this stage.

1. These two petitions challenge the validity of an order made by the Tribunal under Section 254(2) of the Income Tax Act, 1961. It is contended that the Tribunal, in a very unusual manner, entertained additional documents which were not part of the record. Learned counsel refers to the order sheets for 22.11.2017, 24.01.2018 and 13.02.2018 and contends firstly that the early hearing of the appeal for AY 2009-2010 and 2010-2011 was made without appropriate notice. It is contended besides that the question of producing additional documents was not a matter in issue as the order dated 22.11.2017 clearly reflects. It is further submitted that the ITAT's opinion that an order directing early hearing is merely administrative is contrary to its own ruling in *Olympia Paper & Stationery Stores vs. Assistant Commissioner of Income Tax*, 63 ITD 148. Learned counsel also emphasized that for passing any formal order under Rule 29 permitting the additional documents to be brought on record, the Tribunal could not proceed so, as it did.

2. Learned counsel for the Revenue contests some of the factual submissions and argues that the materials on record clearly reveal that the assessee's counsel had agreed to produce the additional documents. He further justifies this course by stressing that a reference to these documents was found in the other documents which were part of the record. Learned counsel also submitted that the ITAT cannot be faulted for fixing an early date of hearing having regard to the circumstance that the appeal for AY 2009-2010 was at an advanced stage of hearing.

3. This Court has considered the submissions of the parties. In view of the final order that is proposed, a detailed discussion of the facts is not necessary. The Tribunal's observation in the impugned order made in the course of the rectification application i.e. that an order, allowing an application for early hearing, is merely administrative, is clearly incorrect. In this regard, the Tribunal's view in *Olympia Paper & Stationery Stores* (Supra) is as follows:-

“9. It consequently follows from the above discussion that a Bench of the Appellant Tribunal should pass judicial orders on any application filed before it directly or through a ministerial staff for consideration be it for

- (a) early hearing;*
- (b) adjourning or advancing hearing;*
- (c) Condoning delay in presenting appeals or applications;*
- (d) stay of disputed demands, during pendency of appeals;*
- (e) staying further proceedings before the tax authorities; or*
- (f) any other matter requiring interference of this Appellant Tribunal in respect of dispensation and administration of justice in any appeal, application or in any matter pending or arising before the Appellant Tribunal.*

10. The judicial orders, by the concerned Bench of the Appellate Tribunal and not administrative orders, have to be passed for expeditious and out of turn hearing of any appeal or application. In this case, no judicial order is passed by 'A' Bench of the Tribunal directing or ordering the Registry to post this appeal for expeditious and/or out of turn on priority basis.

11. *It is one of the most time-honoured and cardinal rule of administration of justice that a party (adversary) should be heard by any Court or Tribunal in the manner he has approached the Court/Tribunal and that he should never be preferred or selected over other litigants/adversaries from the long pending queue unless and until, we repeat, unless and until there are strong compelling and justifiable reasons for bestowing a preferential treatment to a party for hearing him on priority and out of turn basis. Breach of this salutary principle will not only cause prejudice to other litigants who are waiting in the long queue but even cause injustice to them and the Court/Tribunal may be accused of arbitrariness for preferring one litigant over the others from the long queue of pending appeals/ applications.*

12. *There are more than 21,000 appeals, cross-appeals and applications pending before the Madras Benches of the Appellate Tribunal involving crores of rupees of Govt. revenue. This appellant therefore cannot be favoured and chosen and preferred for an out of turn and priority hearing of its appeal on the specious plea that the tax authorities are pressurising for payment of Govt. dues blocked in the pending appeal and therefore he should be preferred over others and be heard expeditiously on priority and out of turn basis. We cannot choose and pick out this appellant from the long queue of appeals and applications and hear him expeditiously. We will be acting arbitrarily and doing injustice to other appellants/ applicants waiting patiently in the long queue for their turn to be heard for justice.”*

4. Consequently, the ITAT's opinion on this aspect is clearly erroneous and is accordingly set aside.

5. As far as the placing on record of the additional documents is concerned, there is considerable controversy as to whether in fact a statement was made on 22.11.2017, as is urged by the Revenue and contested on behalf of the assessee. The assessee also relies upon an affidavit filed by its counsel in this regard. This Court is of the opinion that irrespective of what is apparent even if the documents were produced and in the possession of the ITAT, the question of their being part of the record of the lower appellate authority or the AO did not arise. That is the reason why in the first instance, a complete copy of the said agreement was sought from the assessee. Now there is no dispute that a complete copy is with the Revenue. Nevertheless, the proper procedure prescribed by law in this case has to be followed. In the given circumstances, this naturally means that the Revenue has to move a formal application under Rule 29 of the ITAT Procedure Rules to justify the bringing on record of these additional documents in its possession.

6. In view of the above observations, the impugned order is hereby set aside. It is open to the Revenue to move appropriate applications to bring on record the documents which the assessee furnished to it and also move an application for early hearing.

7. The ITAT shall deal with these applications on merits and pass appropriate orders in accordance with law.

8. The writ petitions are disposed of in the above terms. All the pending applications also stand disposed of.

Copy of the order be given *Dasti* under the signatures of the Court Master.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

MAY 04, 2018
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