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

+ **ITA 625/2018 & CM APPL 21436/2018**

+ **ITA 626/2018 & CM APPL 21437/2018**

OM PRAKASH SANGWAN

Through

Mr.Arvind

..... Appellant

Kumar

and

Mr.Harshvardhan Sharma, Advocates.

Versus

ITO, WARD-33(4), NEW DELHI

Through

Mr.Ashok

..... Respondent

Manchanda

and

Mr.Raghvendra K.Singh, Advocates
for Revenue.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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22.05.2018

Issue notice to the respondent.

Mr.Ashok Manchanda, counsel for respondent accepts notice.

With the consent of the parties, the appeals were heard finally.

The appellant's grievance is that the ITAT vide its impugned order rejected the rectification application. The ITAT's order dismissing the appeal was dated 16.06.2016; however, the appellant moved under Section 254(2) of the Income Tax Act, 1961 (hereinafter referred to as the "Act") by an application on 02.6.2017 which was dismissed by the impugned order.

ITA 625/2018 & ITA 626/2018

Page 1 of 3

Learned counsel for the appellant sought to impress upon the Court that the period mentioned in Section 254(2) of the Act only applied when the Tribunal notices the error and decides to proceed ahead to rectify it and *per se* does not indicate any limitation within which the aggrieved party (assessee or Revenue) can approach it. He relied upon the judgments of the Allahabad High Court titled *Vijay Kumar Ruia v. Commissioner of Income Tax* [2011] 15 taxmann.com (Allahabad) and Gujarat High Court titled *Liladhar T Khushlani Vs. Commissioner of Customs* Tax Appeal No.915 of 2016 delivered on 25.01.2017 for this purpose. This Court is of the opinion that those judgments cannot afford the appellant any comfort. Section 254(2) of the Act was advisably amended to curtail extended period of four years which had been provided to either class of litigants to approach the ITAT for a rectification. In this case, the Court has considered the submissions of the parties. In this case, the ITAT did not decide the appeal on the merits as it is mandated to but rather rejected for non-prosecution.

Rule 24 of the Income Tax Appellate Tribunal's Rules and the other provisions of both the Income Tax Act and Rules indicate that the ITAT has to decide the appeals or matters before it on the merits. In these circumstances, the ITAT's failure to do so, implies that it exceeded its jurisdiction and instead of deciding on the merits, rejected the appeal merely for non-prosecution. In the given circumstances and keeping in view the fact that Rule 25 does not stipulate any period of limitation within which the aggrieved party

can approach the Tribunal, it is open to the appellant to approach the Tribunal with a suitable application for restoration of the appeals; in such event, the appeals could be considered on their merits and decided in accordance with law after hearing both the parties, provided, the application is presented before the ITAT within thirty days from today.

Appeals are disposed of in the above terms.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

MAY 22, 2018
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