NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

REVP No. 282 of 2018

- Commissioner Of Income Tax, Central Revenue Building, Civil Lines, Raipur, Chhattisgarh.

---- Petitioner

Versus

- Chhattisgarh Urology Society, B-04, Jaglivian Urology Centre, Main Road, Samta Colony, Raipur, Chhattisgarh.

---- Respondent

Application for review of the Order dated 17.01.2018

passed in

TAXC No.159/2017

By Circular

in Chamber

Hon'ble Justice Shri Prashant Kumar Mishra &

Hon'ble Justice Shri Ram Prasanna Sharma

11/03/2019

1. The case is barred by limitation of 271 days, however, no application for condonation of delay in filing review petition has been filed.

2. The matter is taken up for consideration in the chamber under provisions of sub-rule (2) of Rule 90 under Chapter VI of the High Court of Chhattisgarh Rules, 2007.

3. The Review-petitioner (in short the petitioner) seeks review

of the order dated 17.01.2018 passed in TAXC No.159/2017 on the grounds that this Court in the order dated 17.01.2018, which is sought to be reviewed herein, upheld the order of the Income Tax Appellate Tribunal, Raipur by relying on the Rajasthan and Allahabad High Court's judgment in the case of CIT vs. Vijay Vargia Vani Charitable Trust and Fifth Generation Education vs. CIT respectively. However, the facts of the instant case are not similar to the facts of the case referred by this Court, since in this case the society has failed to produce any supporting evidence for carrying out any charitable activities for the purpose of public at large.

The further ground raised by the petitioner is that sub-section (1) (A) of Section 12AA of the Act provides that the CIT "shall call for such documents or information from the trust or institution as he thinks necessary or order to satisfy himself about the genuineness of activities of the trust of institution and may also make such inquiries as he may deem necessary in this behalf. The genuineness of the activities of the trust as charitable in nature was not proved by the assessee since the assessee failed to produce books of accounts for the relevant financial year. It may also be mentioned that the assessee itself has vide letter dated 10.10.2013 has stated that *"The society has been registered on 18.02.2013. No significant activities were carried from date of registration till the close of the financial year ended 31st March 2013"* at the time of application for registration u/s12 (A).

According to the petitioner, the charitable activity claimed to have been carried on is basically holding of a camp for promoting Urologists so that more and more patients visit these Urologists and the assessee-society is found to be basically in the nature of club of Urologists Doctors for the mutual benefit of Doctors who are the members of the society.

4. After going through the record it is evident that this Court has passed the detailed order in TAXC No.159 of 2017 on consideration of the facts and circumstances of the case.

5. On consideration of the above-stated grounds, which are in the nature of taking liberty to re-argue the case are unsustainable in the eyes of law. The petitioner cannot be allowed to commit a volte-face and take up new pleas in review petition.

6. There is no other ground pointed out by the petitioner showing any manifest error on the record and has not further brought into the notice, any new facts, which could not be produced earlier despite diligent efforts made by the petitioner. It is well settled principles of law that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 of the Code of Civil Procedure. Even in exercise of review jurisdiction by the High Court under Article 226 of the constitution, the petitioner has not produced any ground for review.

7. It appears that the petitioner by presentation of this review petition seeks an opportunity to argue the entire case afresh on merits under the garb of the review petition, which is not permissible and tenable in law.

8. It is well settled principle of law that under the garb of review petition, the petitioner should not be permitted to argue the entire case afresh, which would amount to convert the review petition into an appeal and the same is

not sustainable in law. (See: Meera Bhanjan v. Smt. Nirmal Kumar Chowdhary, AIR 1995 SC 455. Lily Thomas etc. v. Union of India and others, AIR 2000 SC 1650, Ajit Kumar Rath v. State of Orissa and others, AIR 2000 SC 85, Government of T.N. & Others v. M. Ananchu Asari and others, (2005) 2 SCC 332, and Kerla State Electricity Board v. Hitech Electrothemicsm & Hydropower Ltd. And others, (2005) 6 SCC 651.

9. As a sequel, the review petition, *sans substratum* is liable to be and is hereby dismissed.

Sd/-
Prashant Kumar Mishra
Judge

Sd/-
Ram Prasanna Sharma
Judge

Ankit