IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

INCOME TAX APPEAL NO.11 OF 2020

Prabodh Sadashiv Sadavarte (HUF),
a Hindu undivided Family, through its
Karta Adv. Prabodh S. Sadavarte, aged
about 72 years, occupation : Legal Practitioner,
resident of Ram Nagar, Nagpur … Appellant

-vs-

The Income Tax Officer,
Ward No.1(4), Saraf Chambers,
Sadar, Nagpur … Respondent

Shri S. N. Bhattad, Advocate for appellant.
Shri Anand Parchure, Advocate for respondent.

CORAM : A. S. CHANDURKAR AND N. B. SURYAWANSHI JJ.
DATE : December 09, 2020

Judgment : (Per A. S. Chandurkar, J.)

Admit on the following substantial questions of law :

i) Whether the Tribunal was justified in remanding the proceedings without granting due and sufficient opportunity to the appellant ?

ii) Whether the Tribunal before passing the impugned order ought to have granted an opportunity to the appellant to challenge the legality of the notice of reassessment which was permissible under Rule 27 of the Income Tax Appellate Tribunal Rules, 1963 ? ”

Heard the learned counsel for the parties.

2. Pursuant to the order of assessment passed by the Assessment Officer on 26/03/2014, the assessee sought to challenge the same by filing an appeal before the Commissioner of Income Tax (Appeals). Since the Assessment Officer initiated proceedings based on re-assessment, a ground in that regard was raised in the appeal. The Assessment Order was also challenged on merits. The Commissioner of Income Tax (Appeals) did not accept the contention that the notice issued under Section 148 of the Income Tax Act, 1961 (for short, the said Act) was bad in law. He however held that the assessment as made was not proper and exemption under Section 54-B of the said Act was liable to be allowed. The Revenue being aggrieved by the appellate order preferred further appeal before the Income Tax Appellate Tribunal. During pendency of said appeal pursis was filed on their behalf seeking to withdraw the appeal on the ground that the tax effect involved was within the prescribed monetary limit. The appeal was accordingly dismissed as withdrawn. Thereafter the Revenue sought restoration of the appeal on the ground that the same was falling within exception 10(c) of the Circular dated 11/07/2018 in view of the fact that the audit objection raised by the Department had been accepted. It therefore sought restoration of the proceedings. After issuing notice to the assessee the Tribunal restored the appeal. By its judgment dated 19/02/2020 it allowed the appeal and as a result the proceedings were remanded to the

Commissioner of Income Tax (Appeals). Being aggrieved the present appeal has been filed.

3. Shri S. N. Bhattad, learned counsel for the appellant submits that on 18/02/2020 the counsel for the assessee was not present and a request of adjournment was made before the Tribunal by one Shri Mukesh Agrawal. He had not been instructed to argue the appeal on merits but only to seek adjournment. Further when the order was passed on 19/02/2020 it was recorded by the Tribunal that the counsel for the assessee has appeared and had supported the order impugned. Relying upon the roznama of the proceedings it was submitted that no authority had been given to said Shri Mukesh Agrawal to represent the assessee. He specifically referred to the averments in paragraph 8 of the present appeal memo and submitted that there was no specific denial of the same in the reply as filed. According to him after the appeal was restored on 17/01/2020 a right to raise cross-objection under Rule 27 of the Income Tax Appellate Tribunal Rules, 1963 arose. As a result of the impugned order such rights could not be exercised. He therefore prays that the proceedings be remanded to the Tribunal for fresh adjudication.

4. Shri Anand Parchure, learned counsel for the Revenue supported the impugned order and submitted that as per the practice

prevailing the appellant had been represented by Shri Mukesh Agrawal. The impugned order had been passed after hearing the appellant's representative. He further submitted that a request for restoration of the proceedings for re-hearing could be made before the Tribunal itself and the same was not done by the assessee. He referred to the submissions filed on record and especially paragraph 4 thereof in that regard. He therefore submitted that there was no reason to interfere with the impugned order.

5. We have heard the learned counsel for the parties. It is not in dispute that after the proceedings were withdrawn before the Tribunal a fresh application for restoration of the proceedings on the ground that the matter was falling within exception as carved out by Clause 10(c) of the relevant Circular was filed. The proceedings were accordingly restored on 17/01/2020 and the same were thereafter fixed on 06/02/2020. The record indicates that vakalatnama of Shri S. N. Bhattad, Advocate was filed on record and Shri Mukesh Agrawal had not signed the vakalatnama. According to the appellant Shri Mukesh Agrawal was not duly authorised in that regard. Request for adjournment was made on 19/02/2020 as averred in paragraph 8 of the memorandum of appeal which has not been specifically traversed by the Revenue. The contention that the appellant ought to have moved the Tribunal for restoration of the proceedings

cannot be accepted for the reason that the Tribunal has decided the proceedings on merits and hence the appeal challenging its decesion has been rightly filed.

6. After the proceedings were restored on 17/01/2020 right to raise cross-objection was available to the respondent in those proceedings under Rule 27 of the Rules of 1963. We find that such opportunity has been lost in the process by the appellant. Considering the specific averments made in paragraph 8 of the memorandum of appeal we are of the view that an opportunity to contest the proceedings on merits deserves to be granted to the appellant.

Hence the substantial questions of law as framed are answered in favour of the appellant. It is held that remand of the proceedings by the Tribunal was not justified in the facts of the case. Accordingly the judgment of the Income Tax Appellate Tribunal dated 19/02/2020 is set aside. The proceedings before it are restored for fresh adjudication in accordance with law. It is made clear we have not examined the merits of the respective challenges. All points in that regard are kept open. The Appeal is allowed. The parties to bear their own costs.

JUDGE **JUDGE**

Asmita

Asmita Bhandakkar Digitally signed by Asmita Bhandakkar Date: 2020.12.11 16:01:55 +0530