

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

(Original Side)

R.V.W.O No. 21 of 2021

With

ITAT 129 OF 2016

IA No. GA 1 OF 2021

(Through Video Conference)

Reserved on : 05.07.2022

Pronounced on: 30.08.2022

Principal Commissioner of Income Tax Kolkata-2

...Appellant

-Vs-

M/s V.N. Enterprises Limited

...Respondent

Present:-

Mr. Soumen Bhattacharjee Advocate

.... for the Appellant

Mr. J.P. Khaitan, Sr. Advocate,

Ms. Swapna Das,

Mr. P. Jhunjhumwala,

Mr. Siddharth Das, Advocates

.... for the Respondent/Review Petitioner

**Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE**

**THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE**

Rajarshi Bharadwaj, J:

1. The instant review application has been filed in the original side of this Hon'ble Court. The Review applicant being aggrieved by and dissatisfied with the judgement dated 30.09.2021 passed in ITAT 129 of 2016 has preferred to file the instant review application owing to an error apparent from the records in an order passed in appeal under section 260A of the Income Tax Act.
2. The fact in a nutshell is that the Hon'ble Court disposed of the appeal of revenue in respect of an order dated August 14, 2015 for the assessment years 2002-03, 2003-04 and 2004-05. Although the revenue's appeal for the assessment year 2005-06 was dismissed as withdrawn on account of low tax effect, however, the facts and circumstances giving rise to the appeal for the assessment year 2002-03 and 2003-04 are as follows:
 - A. The applicant a 100 % Export Oriented Unit bought varieties of teas in bulk, blended and packed it for export. Owing to such nature of the business the petitioner claimed exemption under section 10B of the Income Tax Act, 1961 for ten years, commencing from the assessment year 2002-03.
 - B. The assessing officer however disallowed the claim of the applicant on the grounds that blending of tea did not amount to manufacturing. The commissioner of Income tax (Appeals) held for both the years that blending of tea did not amount to manufacturing. However, on further appeal, the tribunal by its order dated August 14, 2015 granted relief to the applicant.
3. The revenue preferred an appeal under section 260A of the Income Tax Act before the Hon'ble Court in respect of the order dated August 14, 2015.
4. After hearing both the parties, the Hon'ble Court reformulated substantial question of law and answered in favour of the revenue and against the assessee. The reformulated substantial question of law reads as-

A. Whether in the facts and circumstance of the case the assessee will be entitled to exemption under section 10B of the Income Tax Act for business of blending of tea being carried on by it taking aid from provisions of other statutes and the policies?

5. Thus, being aggrieved by the Judgement of the Hon'ble Court the present revision application has been filed.

6. Mr. J.P. Khaitan, learned senior Counsel appearing for the applicant submits:

- i. The said judgement and order suffers from an error apparent on the face of the record inasmuch as a substantial question of law was reformulated after the conclusion of the hearing while preparing the judgement without affording any opportunity to the parties to make submissions on the reformulated question.
- ii. If given an opportunity, the applicant would have submitted that the re-formulated question did not cover within its scope the principal argument that the definition of "manufacture" in section 10B of the Income Tax Act, 1961 prior to its substitution by the Finance Act, 2000 continued to apply even for the purposes of the substituted section.
- iii. Reference was made to the provisions of the Export & Import policy and to the SEZ Act to submit that the definition of "manufacture" in section 10B of the Act prior to its substitution was in accord with the definition in such policy and statute under which the eligible undertakings were set up and that the earlier definition continued to apply even for the purposes of the substituted section. It was not contended that the benefit under section 10B of the Act should be granted because of the definition of "manufacture" in the Export & Import policy or the SEZ Act as erroneously recorded in the said judgement and order.

- iv. Reliance was placed upon the judgement of the Hon'ble Supreme Court in Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals Ltd., (2007) 8 SCC and although duly noted, it had not been considered. The non-consideration of the said judgement was an error apparent on the face of the record. The view taken in the said judgement and order was also contrary to the view taken by the division bench of this court in Principal Commissioner of Income Tax v. A.P., (2019). 410 ITR 168 (Cal) and that in case the division bench found itself in disagreement with the previous division bench, it ought to have referred the matter to the Hon'ble Chief Justice for constitution of a larger bench and ought not to have decided the appeal.
- v. The constitution bench of the Hon'ble Supreme Court in Commissioner of Customs v. Dilip Kumar & Company, (2018) 9 SCC 1, held that ambiguity in exemption provision should be resolved in favour of the revenue. In Government of Kerela v. Mother Superior Adoration Convent, (2021) 5 SCC 602, the Hon'ble Supreme Court held that the decision in Commissioner of Customs v. Dilip Kumar & Company, (2018) 9 SCC 1, was not applicable in respect of exemption provisions which had a beneficial purpose and that an exemption provision should be liberally constructed in accordance with the object sought to be achieved if such provision was to grant incentive for promoting economic growth or otherwise had some beneficial reason behind it. The provisions of sections 10A and 10B have a beneficial purpose and grant exemption with the object of promoting exports and earning valuable foreign exchange for the country and therefore, the decision of the Hon'ble Supreme Court in Government of Kerela v. Mother Superior Adoration Convent, (2021) 5 SCC 602 is squarely applicable and is directly contrary to the said judgement and order. The said judgement and order suffers from an error apparent on the face of record since

there is a direct conflict with the judgement and order of the Hon'ble Supreme Court in Government of Kerela v. Mother Superior Adoration Convent,(2021) 5 SCC 602.

- vi. The said judgement and order suffers from an error apparent on the face of record since Dilip Kumar & Co.'s case has no application in the facts and circumstances of the instant case and ought not to have been applied. Thus, this Hon'ble Court ought to have dismissed the appeal of the revenue for the assessment years 2002-03 and 2003-04 and answered the substantial questions of law arising out of the Tribunal's order dated August 14,2015 in the petitioners favour and against the revenue.

7. Learned Counsel appearing for the revenue submits that when the learned senior Counsel appearing for applicant, who has himself appeared for the respondents in appeal and accepts that the question formulated was answered in detail by him at the hearing in appeal, then how can he aggitate on the issue of not framing the question in appeal. This clearly shows that the review application has no merit and should be dismissed with cost.

8. We have given our thoughtful considerations to the respective submissions raised by the bar.

Order 47 Rule 1 (1) of the Code of Civil Procedure, 1908 provides for an application for review which reads as under:

“1.Application for review of judgment.--(1) Any person considering himself aggrieved—
(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
(b) by a decree or order from which no appeal is allowed, or
(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important mater or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order.”

9. Supreme Court in Kamalesh Verma Vs. Mayawati & Others reported in (2013) 8 SCC 320 has categorically held that-

“12. This Court has repeatedly held in various judgments that the jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient.”

“8. It is well settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.”

10. The question framed by the Court was argued by the counsels during hearing of the appeal and each and every issue was considered in the judgement dated 30.09.2021. A review of the judgment dated 30.09.2021 is by no means an appeal in disguise whereby a decision is reheard and corrected, but only if an error is apparent on the face of the record. Mere repetition of the same grounds agitated in review is not maintainable when the same relief sought at the time of arguing the appeal had been negated.

11. In the light of the above discussion, the review application is disposed of with the above observation.

**(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE**

**(RAJARSHI BHARADWAJ)
JUDGE**

Kolkata

30.08.2022
PA(BS)