IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 276 OF 2022

Pr. Commissioner of Income Tax-8 ….Petitioner

V/s.

Turnkey Electricals P Ltd. …Respondent

Mr. Suresh Kumar for Petitioner
Mr. Mandar M Vaidya for Respondent

CORAM : K.R. SHRIRAM &
N.R. BORKAR, JJ
DATED : 28th MARCH 2022

P.C. :

1 The Revenue has filed this petition impugning an order pronounced on 14th October 2019 by Income Tax Appellate Tribunal (ITAT) rejecting the petitioner's miscellaneous application (MA).

2 The MA was taken out by the Revenue for rectification of a mistake in order dated 5th June 2019. In the order pronounced on 22nd January 2019 ITAT dismissed an appeal filed by Revenue pertaining to A.Y.-2008-2009 on the grounds that tax effect in dispute was Rs.17,94,852/- which was below the monetary limit of Rs.20 lakhs specified in CBDT circular No.3 of 2018 as amended. While dismissing the appeal, liberty was granted to Revenue to approach the ITAT for recalling of the order of dismissal and re-institution of the appeal, if at a later date, Revenue found that filing of the appeal was protected by the exception provided in clause (e) of paragraph 10 of CBDT Circular No.3 of 2018 as amended.

3 Subsequently, when revenue realised that its case falls under the protection provided under exception, Revenue preferred the MA for

restoration of the appeal stating that the penalty order emanates from addition based on information received from external sources, i.e., Sales Tax Department through DGIT (Inv). This MA was dismissed by order dated 14th October 2019 on the grounds that it is a debatable issue whether penalty levied is directly covered by exceptions and since it is a debatable issue, the Revenue cannot invoke provisions of Section 254(2) of the Act.

4 In our view, ITAT having given liberty to petitioner to file an application for restoration of the appeal, if at a later date the Revenue found that the filing of the appeal was protected by the exceptions provided in clause (e) of paragraph 10 of the CBDT circular No.3 of 2018 as amended, ITAT ought to have considered the MA and passed order on merits. ITAT should have decided whether the penalty levied by petitioner was covered by the exceptions provided in clause (e) of paragraph 10 of CBDT Circular No.3 of 2018, as amended.

5 In the circumstances, we quash and set aside ITAT's order dated 14th October 2019 with a direction to consider petitioner's application for restoration on merits and decide whether petitioner's case will fall under the exception provided in clause (e) of paragraph 10 of CBDT circular No.3 of 2018 as amended. ITAT is requested to consider and dispose of the MA as early as possible and preferably by 31st July 2022.

6 Petition disposed.

(N. R. BORKAR, J.) **(K.R. SHRIRAM, J.)**

Meera Jadhav