IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1279 OF 2020

Bhalaria Steel Corporation ….Petitioner

V/s.

Income Tax Officer-18(1)(2) & Ors …Respondents

Mr. Devendra H. Jain for Petitioner.
Ms Sushma Nagaraj, Sr. Standing Counsel a/w Ms Vibhuti Keny for Respondents.

CORAM : K.R. SHRIRAM &
M.M. SATHAYE JJ
DATED : 13th JUNE 2023

P.C. :

1 This petition is filed impugning an order dated 23rd October 2019 rejecting petitioner's misc application seeking to recall the exparte order passed by the Income Tax Appellate Tribunal (ITAT) on 27th May 2009.

2 On 2nd March 2021, respondents were directed to file reply by the next date and the matter was stood over to 25th March 2021. The matter was also listed on 6th June 2023 and stood over to today. Over 2 years and 3 months have passed still no reply is filed opposing the petition and therefore, we are not inclined to grant any further time though, Ms Nagaraj requested for time.

3 Petitioner had filed an appeal before the ITAT which came to be dismissed for default on 27th May 2009. The order says that the notice of

hearing has been sent on 6th April 2009 by RPAD and the same has not been returned unserved and, therefore, notice is deemed to have been served. It is stated in order that "………… It can be therefore be reasonably concluded that the assessee is not interested in pursuing the appeal. We therefore dismiss the appeal of the assessee………."

4 On or about 3rd December 2018, petitioner filed misc application for recalling of the order of dismissal. Petitioner relied upon Rule 24 of the Income Tax (Appellate Tribunal) Rules 1963. In the affidavit in support of the application, petitioner has expressed surprise that the appeal came to be dismissed. Petitioner has stated that petitioner had been regularly following up with the department from time to time and had addressed six communications and had also mentioned in those communications that the appeal was pending before the Tribunal. Petitioner was always under the impression that the appeal was pending and was never been told by the Assessing officer about the dismissal of the appeal. In the affidavit, it is also stated that the Assessing officer in fact asked petitioner to submit photocopies of all documents to restructure the file since he was not having papers with him. Petitioner has also stated that somewhere in May 2018 a new Chartered Accountant firm has been appointed for the purpose of audit of petitioner's account for AY-2017-2018 onwards. The new auditors found about the under protest payment made by petitioner for AY-2003-2004 and AY-2004-2005, which was continuing in petitioner's books of account and they made inquiry about the pending status of the appeal in the

ITAT. At that stage, sometime in the first week of June 2018 petitioner came to know about the dismissal of the appeal and petitioner received a copy of the order on 18th June 2018. Thereafter, this application for restoration was filed.

5 In the impugned order, however, it is recorded that petitioner came to know about the disposal of the appeal only when recovery proceedings for demand were enforced by the Assessing Officer on petitioner. This is contrary to what is stated in the application for recall of the order. We also find in the impugned order that the Tribunal has not considered petitioner's submissions about petitioner's repeated follow up with the department and the 6 letters addressed to the department. Therefore, it does not appear to be a case where petitioner had slept over the matter or abandoned the appeal. In our view, this was a fit case where order of dismissal passed on 27th May 2009 should have been recalled. Accordingly, we quash and set aside the impugned order dated 23rd October 2019, as also the original order dated 27th May 2009 dismissing the appeal and restore the Appeal No.ITA No.7220/M/2007 to file of ITAT.

6 Since the matter relates to AY-2004-2005, we would hope that the Tribunal decides this matter expeditiously, subject to its schedule, as early as possible and preferably before 31st December 2023.

7 At this stage, Ms Nagaraj states since the court has allowed the petition, petitioner should atleast be put to terms. Mr. Jain in response states that petitioner will pay as donation any reasonable amount as the court may

direct to any charity. Petitioner to give donation of Rs.1,00,000/- to PM Cares Fund. The account details are as under :

Name of the Account : PM CARES
Account Number : 60355358964
IFSC : MAHB0001160
Branch : UPSC - New Delhi

This amount shall be paid within four weeks from today and proof of payment shall be filed by way of affidavit within four weeks from the time this order is uploaded, failing which the restored appeal will stand dismissed without further reference to the court or ITAT.

(M. M. SATHAYE, J.) **(K.R. SHRIRAM, J.)**