

23.04.2024
Item No.16
gd/ssd

RVW/231/2023
IA NO: CAN/1/2023, CAN/2/2023
ASHISH KUMAR KANODIA
VS
THE UNION OF INDIA AND ORS.
in
MAT/1108/2023
ASHISH KUMAR KANODIA
VS
UNION OF INDIA AND ORS.

Mr. J.A. Khan,
Mr. Himangshu Kumar Ray,
Mr. T.A. Khan
..for the Petitioner.

Mr. Soumen Bhattacharjee,
Mr. Ankan Das
..for the Income Tax Department.

Re: CAN 1 of 2023

1. CAN 1 of 2023 has been filed by the petitioner seeking condonation of delay of three days in filing the review petition.

2. Learned counsel for the petitioner has referred to the explanation which has been furnished in the application and also has made submission in respect of the explanation for the delay.

3. We find that the delay in filing the review petition has been sufficiently explained and the petitioner was prevented from filing the review petition within time on account of bona fide reason.

4. Hence, CAN 1 of 2023 is, accordingly, allowed. The delay in filing the review petition is condoned.

Re: RVW 231 of 2023

5. This review application has been filed to review the judgment and order dated 11.08.2023 in MAT 1108 of 2023.

6. Before we examine the merits of the case we need to point out the scope of this court in exercising review jurisdiction under Order XLVII Rule 1(1) CPC. In this regard, it will be beneficial to take note of the decision of the Hon'ble Supreme Court in *Kamalesh Verma v. Mayawati & Others* reported in (2013) 8 SCC 320 wherein the Hon'ble Supreme Court held as follows:

“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.”

7. Thus, the applicant to enable the court to examine as to whether that the judgment has to be reviewed has to point out an error which is apparent on the face of the record. As rightly pointed out by the learned senior standing counsel appearing for the respondent/department that in the grounds of review, the challenge is on the merits of the matter and, therefore, it is a clear attempt of the applicant for rehearing of the case before this court which is impermissible.

8. The learned advocate placed reliance on decisions of this court in *Girdhar Gopal Dalmia v. Union of India* reported in (2022) 141 taxmann.com 251 (Calcutta) and *Mukesh J. Ruparel v. Income Tax Officer, Ward 27(2)(1)* reported in (2023) 153 taxmann.com 70 (Bombay) for the proposition that a time limit of seven days' for the purpose of submission of the reply to the notice issued under Section 148A(b) of the Income Tax Act, 1961 cannot be dispensed with. With regard to the proposition that the conduct of the appellant cannot be a ground to waive the statutory period of limitation fixed under the Act, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in *A.C. Jose v. Sivan Pillai And Others* reported in (1984) 2 SCC 656.

9. Before we consider the applicability of the decisions, the facts in the instant case have to be

noted. The notice under Section 148A(1)(d) of the Act is dated 21.03.2022 and the applicant was granted time to submit the reply by 28.03.2022. According to the applicant, the notice was served through speed post only on 24.03.2022 and 26.03.2022 and 27.03.2022 being Saturday and Sunday the applicant was left with only two working days to submit their reply.

10. Though such is the stand taken by the applicant, this appears to have not prejudiced the applicant in any manner as the applicant had already uploaded his reply on 28th March, 2022 within the time stipulated in the notice issued under Section 148A(b) of the Act.

11. Undoubtedly, the period of limitation prescribed under the statute is a beneficial provision for the assessee and it is well open to the assessee to raise an issue that sufficient opportunity was not given. In the instant case, the question of the applicant having suffered any prejudice does not arise as the applicant had submitted to the jurisdiction and given the reply within the cut off date.

12. Thereafter the reply was considered and the order under Section 148A(d) of the Act was passed on 06.04.2022. Subsequently the assessee was put on notice under Section 144B dated 13.02.2023.

13. Subsequently a notice under Section 143(2) read with Section 147 of the Act was issued on

15.03.2023. On 16.03.2023 the applicant has responded to the notice and given a letter to the said effect. The writ petition was filed on 24.04.2023.

14. Thus, the sequence of events clearly show that the assessee has cooperated with the department in the proceedings and the present attempt of the assessee is to get the matter reheard and apart from that in the absence of any error apparent on the face of the judgment being pointed out the review application cannot be entertained.

15. Further, the learned advocate appearing for the applicant submitted that in terms of the observations made by this court in the judgment dated 11.08.2023, the applicant has taken additional reply to the notice issued under Section 143(2) of the Act dated 15.03.2023 and the same has been considered and the assessing officer has also passed an order.

16. Therefore, in the facts of the case the decisions relied on the assessee have no application.

17. For the above reasons, we find no grounds and accordingly the same is dismissed.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)