



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**REVIEW APPLICATION NO. 24 OF 2024 IN
INCOME TAX APPEAL NO. 7 OF 2023**

M/s Everest Education Society,
C/o Seema Nursing Home,
Roshan Gate, Aurangabad – 431 001
PAN :- AAATE2231P

.. Applicant
(Orig. Appellant)

Versus

Assistant Commissioner of Income Tax,
Exemption Circle, Aurangabad

.. Respondent
(Orig. Respondent)

...
Advocate for applicant : Mr. Mahesh S. Deshmukh along with Mr. Shailendra
S. Gangakhedkar i/b. Mr. S.S. Kazi
Standing Counsel for the respondent : Mr. Alok Sharma
...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 24 APRIL 2024

ORDER (MANGESH S. PATIL, J.) :

This is an application purportedly under section 114 of the Code of Civil Procedure by the assessee, which is a trust and the original appellant, seeking review of the order passed by this Court in its Income Tax Appeal no. 7 of 2023 preferred under section 260-A of the Income tax Act, 1961 (**the Act**).

2. It is necessary to note that though the learned advocate Mr. Sharma for the respondent – revenue initially raised objection as to the maintainability of application for review, with a common

understanding we have heard the review application in its entirety and are passing the order.

3. Shortly stated, the facts leading to the filing of this review application are to the effect that the applicant is a trust engaged in running educational institutions. The assessment officer served it a notice under section 143(2) of the Act on 03-02-2014. On enquiry, he concluded that it had received the donations from 7145 donors to the tune in aggregate of Rs.2,89,20,995/- and reached a conclusion that those donations were anonymous, under section 115 BBC of the Act. The applicant challenged that decision before the Commissioner of Income Tax (Appeal) in a statutory appeal which modified the decision and held that the donations only to the tune of Rs.82,600/- were anonymous. The Revenue challenged that order before the ITAT. Even the applicant preferred an appeal, however, it was beyond limitation and requested for condoning the delay. By a common order, the ITAT refused to condone the delay in preferring appeal by the applicant and allowed Revenue's appeal and restored the findings of the Assessment Officer. By the order under review, we dismissed the applicant's appeal preferred under section 260-A of the Act.

4. The reasoning resorted to by us while dismissing the applicant's appeal was on the ground that this Court had inherent limitations while deciding the appeal preferred under section 260-A of

the Act. The exemption being claimed by the application under section 11 of the Act was not a pure question of law which alone could have been gone into in the appeal. By virtue of section 68 of the Act read with Rule 46A of the Income Tax Rules, 1962, the onus was on the applicant to satisfy that the donations received by it were not anonymous. It had failed to discharge the onus. It had not even filed any return. Only an attempt was made to furnish some record. Exercise of verifying genuineness by sample check was resorted to. Except few, the donors could not be identified.

5. We had also observed that in the light of section 133(6) of the Act, donors' list was produced before the CIT (A) in the appeal under the pretext that the first list produced by it was erroneous, still, enquiry was undertaken by resorting to sample check to identify the donors. Identity of the donors could not be established. Eight donors flatly denied to have paid any donation. Notices / letters sent to many of the donors from the list furnished by the applicant under section 133(6) had returned unserved with the remarks 'address not found', 'insufficient address', 'addressee left'. Consequently, we held that the decision of the ITAT of holding the conclusion drawn by the Assessment Officer being plausible, no substantial question of law was being raised and the appeal was dismissed.

6. The learned advocate Mr. Deshmukh for the applicant would submit that the applicant was entitled to derive the benefit of circular issued by the Central Board of Direct Taxes (CBDT) as has been held in the matter of ***Navnit Lal C. Zaveri V. K.K. Sen; AIR 1965 SC 1375*** and ***C. B. Gautam V. Union of India; 1993(1) SCC 78*** and ***UCO Bank Calcutta Vs. Commissioner of Income Tax; 1999 (4) SCC 599***. He submits that in view of circular no. 10 and 13 of 2013 issued by the CBDT, no notice issued under section 143 (2) could have been issued.

7. Section 68 of the Act was not applicable since the applicant had disclosed the income from donation. The applicant is a charitable institution registered under section 12A of the Act but the fact was overlooked. The notice issued to the applicant under section 142(1) of the Act was premature since the period for filing the return was still to get over. Subsequently, return was also filed on 09-11-2013 accompanied by all the relevant documents. Verification in respect of all the 7145 donors was not undertaken. Though the list of donors was produced, it was produced by the employees in the absence of the chairman. There was no intention or deliberate attempt to mislead the Revenue. The list was prepared by the clerk without verification from the original record but the Assessment Officer had failed to appreciate the fact and passed the order on 27-03-2014 ignoring that there is no

provision obligating the applicant to maintain record regarding identity of donors. Affidavits of a trustee and a clerk were also filed as contemplated under Rule 46-A to clarify the error in preparing the list.

8. While the appeal was pending before the CIT (A), there were as many as 770 notarized affidavits and still erroneously, doubt was raised about the identity. It was a plausible explanation but this Court had overlooked all these circumstances. The CIT (A) after due scrutiny of the affidavits and after summoning the two other witnesses from the trust under section 131 of the Act had correctly observed that the first list produced by the clerk was an error and accordingly, the onus was discharged by the applicant, still, a perverse finding was recorded by the ITAT.

9. Learned advocate Mr. Deshmukh would further submit that the appeal before the ITAT by the Revenue itself was not maintainable as the appeal decided by the CIT (A) was in respect of remand report. Even this aspect was not considered by this Court, as has been held in the matter of ***Jivatlal Purtapshi Vs. CIT; [1967] 65 ITR 261 (Bom)*** and ***B. Jayalakshmi Vs. Assistant Commissioner of Income Tax; 2018 Online Mad 13746***.

10. Learned advocate would submit that observations in paragraph no. 13 and 15 of the order under review are contrary to the

record. He would submit that the applicant had disclosed the donations together with the list and merely because it was not a complete list of donors, should not have necessarily been resorted to draw inference that it was trying to introduce unaccounted money.

11. Apart from these submissions touching to the facts, learned advocate Mr. Deshmukh for the applicant would submit that in the light of observations of the Supreme Court in the matter of ***Commissioner of Income Tax, Guwahati-I V. Meghalaya Steels Ltd.; (2015) 17 SCC 647*** and ***Commissioner of Income Tax, Panaji V. Automobile Corporation of Goa Limited; (2017) 11 SCC 315***, this Court has the power to undertake review in respect of the order passed in an appeal under section 260-A of the Act.

12. Learned advocate Mr. Deshmukh would further rely upon following decisions to substantiate his arguments:

- i) ***Director of Income Tax V. Keshav Social and Charitable foundation; 2005 SCC OnLine Del 1487,***
- ii) ***Director of Income Tax V. Hans Raj Samarak Society; 2012 SCC OnLine Del 4916,***
- iii) ***Commissioner of Income-Tax and another Vs. MBA Nahata Charitble Trust; 2014 SCC OnLine Kar 12351.***

13. Per Contra, learned advocate Mr. Sharma for the revenue would raise a preliminary objection regarding maintainability of the application for review. He would submit that review is a statutory power and cannot be assumed to inhere in this Court. There is no

provision in the Act conferring such power. Even if the High Court is a court of record, it can merely correct its mistake or error which power would be independent and referable to Article 215 of the Constitution of India and in the absence of any statutory provision, this court cannot undertake review.

14. As far as the merits of the review application are concerned, Mr. Sharma would submit that this Court can undertake review only within the parameters laid down by the catena of decisions. Appeal cannot be heard again under the guise of review application. There is no error apparent on the face of the record. Though a submission was made on behalf of the Revenue that circular no. 10 and 13 of CBDT would not be applicable to the fact situation of the matter in hand, this Court had not recorded any finding thereon. This Court had merely demonstrated as to how the observations of the ITAT were plausible, inasmuch as there was no authenticity of the donors. No authentic record was produced. Even the list of donors was changed and burden was not discharged by the applicant. Since the applicant's appeal was decided by this Court by pointing out as to how no substantial question of law was arising, there is no error much less apparent on the face of the record. Applicant cannot be allowed to put up a challenge to the order as if review jurisdiction can be exercised for deciding the matter afresh. The submissions made on behalf of the

applicant would require this Court to undertake a re-hearing of the appeal which cannot be allowed.

15. Mr. Sharma would also endeavour to demonstrate as to how the CBDT circulars no. 10 and 13 are not applicable to the applicant's case even on facts.

16. As far as maintainability of the review application is concerned, in our considered view, the decision of the Supreme Court in the matter of ***Meghalaya Steel and Automobile Corporation of Goa*** (supra) needs to be followed wherein it has been expressly laid down that by virtue of the High Court being a Court of record, in view of Article 215 and 226 of the Constitution of India, it will have inherent power and jurisdiction to undertake a review in the light of sub-section 7 of section 260-A of the Act.

17. So far as the merits of the review application are concerned, a bare look at the submissions of the learned advocate for the applicant incorporated herein-above, which we have deliberately done, would demonstrate that all the submissions are befitting the arguments in the appeal against the order under review rather than an endeavour to point out any error apparent on the face of the record. The argument is targeted in demonstrating as to how the appeal has been wrongly decided, which is not the purport of review jurisdiction.

18. As we have demonstrated, it cannot be an appeal in disguise which precisely seems to be the case in the matter in hand. We avoid to burden this order by citing several decisions on this aspect of the matter. Suffice for the purpose to observe that the powers of review are circumscribed by well settled norms. It is only an error which can be rectified. If, as is being submitted on behalf of the applicants, every point is to be decided afresh, it would tantamount to re-hearing of the appeal. The whole attempt on behalf of the applicant seems to be to point out as to how this Court had committed illegality in deciding the appeal rather than making any attempt to point out any error apparent on the fact of the record. Suffice for the purpose to refer to the decision in the matter of ***Shanti Conductors Pvt. Ltd. V. Assam State Electricity Board and others; (2020) 2 SCC 677***, wherein it has been observed that the scope of review is limited and a party cannot be permitted to re-agitate and re-argue a question under the guise of review. The error should be evident and if it requires a process of reasoning to be undertaken to detect it, it can hardly be said to be an error apparent on the face of record.

19. As laid down in the matter of ***Arun Dev Upadhyaya Vs. Integrated Sales Services Ltd.; (2023) 8 SCC 11***, an error on the face of the record must be such an error which merely looking at the record

should strike and it should not require any long drawn procedure on the points where there may be two opinions.

20. Bearing in mind these principles, the whole submissions made by Mr. Deshmukh on behalf of the applicant would clearly demonstrate that every attempt has been made to re-argue the appeal which cannot be permitted to be done.

21. It is admitted that no concrete record of the donors was produced. Even a list which was initially produced, was subsequently replaced and that was not even a complete list of donors as is being submitted on behalf of the applicant. If such is the state-of-affairs, when the ITAT has, for the elaborate reasons, demonstrated as to how the applicant had not been able to discharge the burden, by producing independent material in respect of the 7145 donors who had in aggregate paid the donations to the tune of Rs.2,89,20,955/- and when even an attempt to resort to random check had grossly failed and 8 of the donors even denied to have paid any donation, we had dismissed the appeal by pointing out as to how the observations and the conclusion of the ITAT was a plausible one and as to how no substantial question of law was arising.

22. In our considered view, there are no sufficient and cogent grounds and reasons for exercising the review jurisdiction.

23. The application is rejected.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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