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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 3835/2024 & CM APPL. 15726/2024 (Interim Relief)

MANOJ KUMAR SHARMA .....Petitioner

Through: Mr. Sparsh Bhargava and Ms. Vanshika Taneja, Advs.

versus

NATIONAL FACELESS APPEAL CENTRE, NEW DELHI .....Respondent

Through: Mr. Abhishek Maratha, SSC along with Mr. Apoorv Agarwal, Mr. Parth Samwal, JSCs, Ms. Nupur Sharma, Mr. Gaurav Singh, Mr. Bhanukaran Singh Jodha and Ms. Muskaan Goel, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **14.08.2024**

1. This writ petition impugns the order dated 10 January 2024 passed by the **Commissioner of Income Tax (Appeals)**[1] dismissing the appeal of the petitioner for non-prosecution. The CIT(A) has taken the view that despite various notices having been issued, the petitioner chose not to attend to the proceedings and thus, came to assume that he was not interested in pursuing the appeal.

2. As we peruse Para 4.1 of the impugned order as well as the averments made in the counter affidavit, it appears to be the stand of the respondent that the hearing and intimation notices were sent to the

[1] CIT(A)

following email address-“sanjeetsharm180@gmail.com”

3. However, learned counsel for the writ petitioner has drawn our attention to the memo of appeal as well as the return which was filed for the year in question and which according to the writ petitioner carried the following email address particulars:- “sanjeetsharma180@gmail.com”.

4. The hearing notices thus, do not appear to have been sent or addressed to the aforesaid address, as a consequence of which the petitioner was unable to attend on the dates fixed by the CIT(A).

5. Since and undisputedly, the impugned order has come to be rendered ex parte, in our considered opinion, CIT(A) would be required to examine whether the same is liable to be recalled, since any application made in that respect would clearly amount to the writ petitioner calling upon the CIT(A) to exercise powers of procedural review.

6. We note that these aspects were duly noticed by us in our order of 28 March 2024.

7. Today Mr. Maratha, learned counsel appearing for the respondents, on instructions states that the **Income Tax Business Application Portal**[2] presently does not have the requisite functionality for such an application seeking procedural review being uploaded or maintained.

8. In our considered opinion, the mere fact that the ITBA portal does not have the requisite functionality would not detract from the obligation of the CIT(A) to examine applications like the present which the petitioner may choose to move. This we observe since every authority required to undertake a quasi judicial exercise is

[2] ITBA portal

recognised to have an inherent power to exercise powers of procedural review.

9. We note that an identical submission came to be raised with respect to the powers of the **National Company Law Tribunal**[3] to examine an application seeking a review of its order according approval to a Resolution Plan in situations where the same may have come to be approved in violation of the statutory prescriptions which would apply.

10. While dealing with this aspect, the Supreme Court in **Greater Noida Industrial Development vs. Prabhjit Singh Soni and Anr.**[4] alluded to the principles of procedural review with such powers being liable to be viewed as being inherent in a quasi-judicial authority.

11. We take note of the following observations which came to be rendered by the Supreme Court in *Greater Noida*:-

> "**42.** Rule 11 of the National Company Law Tribunal Rules, 2016, framed under Section 469 of the Companies Act 2013, which is in pari materia with Section 151[29] of the Code of Civil Procedure, 1908 ("CPC"), preserves the inherent powers of the Tribunal in the following terms:
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> > "11. Inherent powers.-Nothing in these Rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal."
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> **43.** In *Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hirala* a four-Judge Bench of this Court in the context of powers vested in the Court, while interpreting Section 151 CPC, observed : (AIR pp. 533-34, para 23)
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> > "*23.* ... The section itself says that nothing in the Code shall be deemed to limit or otherwise affect the inherent power of the Court to make orders necessary for the ends of justice. In the face of such a clear statement, it is not possible to hold that the provisions of the Code control the inherent power by limiting it or otherwise affecting it. The inherent

[3] NCLT

[4] (2024) 6 SCC 767

power has not been conferred upon the court; it is a power inherent in the Court by virtue of its duty to do justice between the parties before it."

(emphasis supplied)

44. In *Grindlays Bank Ltd. v. Labour Commr* a question arose whether Central Government Industrial Tribunal has power to recall/set aside an ex parte award when the party aggrieved had been prevented from appearing by a sufficient cause. Holding that such power inheres in a Tribunal, this Court observed: (SCC p. 423, para 6)

"6. We are of the opinion that the Tribunal had the power to pass the impugned order if it thought fit in the interest of justice. It is true that there is no express provision in the Act or the Rules framed thereunder giving the Tribunal jurisdiction to do so. *But it is a well-known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, we are of the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary.* We do not find any such statutory prohibition. On the other hand, there are indications to the contrary."

(emphasis supplied)

45. In addition to above, recognising the difference between a procedural review and a review on merits, it was observed: (*Grindlays Bank case*, SCC p. 425, para 13)

"13. ... The expression "review" is used in the two distinct senses, namely, (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. ... Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito justitiae to prevent the abuse of its process, and such power inheres in every court or Tribunal."

46. In *State of Punjab v. Davinder Pal Singh Bhullar*[32], while considering the bar imposed on a court by Section 362 of the Criminal Procedure Code, 1973 on review of a judgment or final order disposing of a case, it was observed : (SCC p. 795, para 46)

"*46.* If a judgment has been pronounced without jurisdiction or in violation of principles of natural justice or where the order has been pronounced without giving an opportunity of being heard to a party affected by it or where an order was obtained by abuse of the process of court which would really amount to its being without jurisdiction, inherent powers can be exercised to recall such order for the reason that in such an eventuality the order becomes a nullity and the provisions of Section 362 CrPC would not operate. In such an eventuality, the judgment is manifestly contrary to the audi alteram partem rule of natural justice. The power of recall is different from the power of altering/reviewing the judgment. However, the party seeking recall/alteration has to establish that it was not at fault."

The above passage was cited and approved by a three-Judge Bench of this Court in *New India Assurance Co. Ltd. v. Krishna Kumar Pandey*.

47. In *Budhia Swain v. Gopinath Deb*, after considering a number of decisions, a two-Judge Bench of this Court observed: (SCC p. 401, para 8)

"8. In our opinion a tribunal or a court may recall an order earlier made by it if
(i) the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction is patent,
(ii) there exists fraud or collusion in obtaining the judgment,
(iii) there has been a mistake of the court prejudicing a party, or
(iv) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented.
The power to recall a judgment will not be exercised when the ground for reopening the proceedings or vacating the judgment was available to be pleaded in the original action but was not done or where a proper remedy in some other proceeding such as by way of appeal or revision was available but was not availed. The right to seek vacation of a judgment may be lost by waiver, estoppel or acquiescence."

48. The law which emerges from the decisions above is that a tribunal or a court is invested with such ancillary or incidental powers as may be necessary to discharge its functions effectively for the purpose of doing justice between the parties and, in absence of a statutory prohibition, in an appropriate case, it can recall its order in exercise of such ancillary or incidental powers.

49. In a recent decision (i.e. *Union Bank of India v. Dinkar T. Venkatasubramanian*[35]), a five-member Full Bench of NCLAT held that though the power to review is not conferred upon the

Tribunal but power to recall its judgment is inherent in the Tribunal and is preserved by Rule 11 of the NCLT Rules, 2016. It was held that power of recall of a judgment can be exercised when any procedural error is committed in delivering the earlier judgment; for example, necessary party has not been served or necessary party was not before the Tribunal when judgment was delivered adverse to a party. It was observed that there may be other grounds for recall of a judgment one of them being where fraud is played on the court in obtaining a judgment. This decision of NCLAT was upheld by a two-Judge Bench of this Court vide order dated 31-7-2023 in *Union Bank of India v. Amtek Auto Ltd. (Financial Creditors*)

50. In light of the discussion above, what emerges is, a court or a tribunal, in absence of any provision to the contrary, has inherent power to recall an order to secure the ends of justice and/or to prevent abuse of the process of the court. Neither the IBC nor the Regulations framed thereunder, in any way, prohibit, exercise of such inherent power. Rather, Section 60(5)(c) IBC, which opens with a non obstante clause, empowers NCLT (the adjudicating authority) to entertain or dispose of any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under the IBC. Further, Rule 11 of the NCLT Rules, 2016 preserves the inherent power of the Tribunal. Therefore, even in absence of a specific provision empowering the Tribunal to recall its order, the Tribunal has power to recall its order. However, such power is to be exercised sparingly, and not as a tool to rehear the matter. Ordinarily, an application for recall of an order is maintainable on limited grounds, inter alia, where:

(a) the order is without jurisdiction;
(b) the party aggrieved with the order is not served with notice of the proceedings in which the order under recall has been passed; and
(c) the order has been obtained by misrepresentation of facts or by playing fraud upon the court/tribunal resulting in gross failure of justice."

12. In view of the aforesaid, we dispose of this writ petition according liberty to the writ petitioner to move the concerned respondent by way of an application seeking recall of the order dated 10 January 2024. Any such application that may be made, if not possible to be uploaded, shall be accepted in physical form and placed before the concerned CIT(A) for consideration and disposal in

accordance with law.

13. In the meanwhile, in case any interim protection is sought, it shall be open for the petitioner to move the appropriate authority in terms of Section 220(6) of the **Income Tax Act, 1961**[5].

14. All rights and contentions of respective parties on merits are kept open.

YASHWANT VARMA, J

RAVINDER DUDEJA, J

AUGUST 14, 2024/RW

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[5] Act