

Court No. - 8

Case :- WRIT TAX No. - 197 of 2023

Petitioner :- M/S Purnagiri Rice Mill,Shahjahanpur Thru. Authorized Representative Shri Rakesh Kumar Gupta

Respondent :- Union Of India Thru. Ministry Of Finance Deptt. Of Revenue,New Delhi And 2 Others

Counsel for Petitioner :- Vibhanshu Srivastava,Shishir Yadav

Counsel for Respondent :- A.S.G.I.,Kushagra Dikshit

Hon'ble Pankaj Bhatia,J.

1. Heard Sri Vishnu Srivastava the counsel for the petitioner, Dr. R K Mishra, the counsel for the respondent no.1 as well as Sri Neerav Chitravanshi assisted by Sri Kushagra Dikshit the counsel for the respondent no.3.

2. The present petition has been filed by the petitioner challenging the order dated 21.06.2023 passed by the opposite party no.2 whereby the recall application filed by the petitioner was dismissed on the grounds of limitation prescribed under section 254 (2) of the Income Tax Act, 1961 and ignoring the provisions of Rule 24 of the Income Tax (Appellate Tribunal) Rules, 1963.

3. The submission of the counsel for the petitioner is that an order of assessment/penalty came to be passed against the petitioner on 11.03.2015 against which the petitioner preferred an appeal before the Commissioner of Income Tax (Appeals) which too was dismissed on 03.11.2016. The petitioner challenged the order of CIT (A) by filing an Appeal before the Income Tax Appellate Tribunal, Lucknow Bench. It is the case of the petitioner that the said appeal filed by the petitioner was listed for hearing on 26.06.2018, however as the notice of hearing was not served upon the petitioner, he could not appear on the said date, as a result whereof, the appeal preferred by the petitioner was dismissed for non-prosecution. While dismissing the said appeal, an observation was made by the ITAT that the assessee would be at liberty to move an application under section 254 of the Income Tax Act, in case the assessee so desires.

4. It is argued that although the appeal was dismissed for want of prosecution and the remedy for recalling of the said order was prescribed under Rule 24 of the Income Tax (Appellate Tribunal) Rules, 1963, however, in view of the observations made by the ITAT, while dismissing the appeal for non-prosecution, an application was filed with the title "Application

under section 254 of the Income Tax Act". The said application dated 25.02.2019, filed by the petitioner on 08.04.2019, was heard and the same was dismissed vide order dated 21.06.2023 mainly on the ground that the application has been filed beyond the limitation prescribed under section 254(2) of the Income Tax Act, referred to in Section 253(3) and 253(4) of the Act.

5. The contention of the counsel for the petitioner is that against the dismissal of appeal for want of prosecution, the remedy of recalling the order is clearly prescribed under Rule 24 of the Income Tax (Appellate Tribunal) Rules, 1963. Rule 24 is quoted herein below :

"24. Hearing of appeal ex-parte for default by the appellant.-
Where, on the day fixed for hearing or on any other date to which the hearing may be adjourned, the appellant does not appear in person or through an authorized representative when the appeal is called on for hearing, the Tribunal may dispose of the appeal on merits after hearing the respondent:

Provided that where an appeal has been disposed of as provided above and the appellant appears afterwards and satisfies the Tribunal that there was sufficient cause for his non-appearance, when the appeal was called on for hearing, the Tribunal shall make an order setting aside the ex-parte order and restoring the appeal."

6. He argued that once a specific provision for recalling the order is provided in the Rules under which the Tribunal is supposed to work, the mention of Section 254 in the impugned order is wholly misplaced as the power under section 254 of the Income Tax Act is prescribed for rectification of errors which have been occurred in the order of the Appellate Tribunal and thus, the mention of provisions of Section 254 (2) and the limitation prescribed therein is wholly unwarranted as the application of the petitioner from the tenor was under Rule 24 of the Income Tax (Appellate Tribunal) Rules, 1963. He argues that mention of Section 254 in the application filed by the petitioner was only in view of the observations made by the Appellate Tribunal in its order dated 26.06.2018.

7. The counsel for the respondent Sri Neerav Chitravanshi, based upon the instructions, argues that the application was dismissed in view of the bar of limitation prescribed under section 254 (2) of the Income Tax Act and no error has been committed by the Tribunal as the tile of the application filed by the petitioner itself disclosed the same to be an application under section 254 of the Act.

8. The counsel for the petitioner places reliance on a judgment in the case of *Cement Corporation of India Limited vs. Assistant Commissioner, Income Tax Circle 5(2) New Delhi; WP (C) 1486 of 2013 decided on 06.02.2023* in which the Delhi High Court had the occasion to consider a similar order passed by the Tribunal invoking the limitation as prescribed under section 254 (2) while deciding the application for recall of an order. The Delhi High Court after considering the provisions of section 254(2) of the Income Tax (Appellate Tribunal) Rules discussed the provisions and decided that the application for recall is to be decided in terms of the provisions contained in Rule 24 of the Rules and reliance upon Section 254 was misplaced.

9. I do not see any reason to disagree with the said judgment as in the present case also, the application moved by the petitioner, in its tenor was traceable to the provisions of Rule 24 of the Income Tax (Appellate Tribunal) Rules and the petitioner never sought rectification of the said order. A mere wrong mention in the title of the application, that too on the basis of the observations made by the Tribunal itself cannot be construed against the petitioner and cannot wipe away the scope of application under Rule 24 of the Income Tax (Appellate Tribunal Rules). Thus, the order impugned dated 21.06.2023 is clearly unsustainable and is quashed. The matter is remanded to the Income Tax Appellate Tribunal to pass a fresh order in the light of the provisions contained under Rule 24 of the Income Tax (Appellate Tribunal) Rules, 1963 in accordance with law.

10. The writ petition stands *disposed off* with the said observations.

Order Date :- 4.10.2023

VNP/-