



Darshan

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 37437 OF 2024

Leena Power Tech Engineers Pvt. Ltd. ...Petitioner

Versus

Deputy Commissioner of Income – Tax
Circle – 15(I)(2) and Ors. ...Respondents

Mr Rahul Hakani, a/w Mr Anubhav Singh, Ms Siddhi Sawant,
for the Petitioner.

Mr Akshileshwar Sharma, for the Respondent-Income Tax.

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CORAM: M.S. Sonak &
Jitendra Jain, JJ.

DATED: 25 February 2025

Oral Judgment (Per M S Sonak, J.):

1. Heard learned counsel for the parties.
2. Rule. The Rule is made returnable immediately at the request of and with the consent of learned counsel for the parties.
3. The Petitioner challenges the impugned order dated 03 November 2023 made by the Income Tax Appellate Tribunal (“ITAT”) dismissing the Petitioner’s Miscellaneous Application No.231/MUM/2022 in ITA No.1313/MUM/2020 as being barred by limitation.

4. At the outset, Mr. Rahul Hakani, the learned counsel for the Petitioner, submits that there was no delay in instituting the Miscellaneous Application, given the order of the Hon'ble Supreme Court dated 10 January 2022 in Sou Motu Writ Petition (C) No.3 of 2020 concerning cognisance for extension of limitation during the COVID period. He submits that assuming a marginal delay of three months, sufficient cause was shown for the condonation of delay.

5. On the above grounds, Mr Hakani submitted that the impugned order may be set aside, delay, if any, condoned and directions be issued to the ITAT to decide Petitioner's Miscellaneous Application on merits.

6. Mr Akhileshwar Sharma, the learned counsel for the Respondents, submitted that the Hon'ble Supreme Court's order of 10 January 2022 did not apply in the present case because, according to the Petitioner, the limitation period expired on 31 May 2022 and not within the period 15 March 2020 and 28 February 2022. Therefore, he submitted that such a plea was correctly not even raised before the Tribunal and finds no reflection in the impugned order.

7. Mr Sharma submitted that in terms of Section 254 (2) of the Income Tax Act, 1961 (IT Act), a rectification application must be filed within six months from the date of knowledge of the order sought to be rectified. He submitted that beyond this period, even the Tribunal has no power to condone delay. He relied on **Ram Baburao Salve Vs. Assessing Officer, Ward (17) (3)(1), Mumbai & Ors¹**, in support of this contention.

¹ 2024 162 taxmann.com 354 (Bombay)

8. The rival contentions now fall for our determination.
9. The ITAT, in this case, by order dated 21 September 2021, rejected the Assessee's appeal. The Petitioner claims that this order was communicated to the Petitioner on 17 November 2021. Accordingly, in Section 254(2), the limitation for filing a Miscellaneous Application under Section 254(2) expires on 31 May 2022. This Section provides that such an application for rectification must be filed within six months from the end of the month the order was passed.
10. The Miscellaneous Application invoking Section 254(2) was filed only on 26 August 2022, after an approximate three-month delay. The ITAT, in the impugned order dated 03 November 2023, held that it had no jurisdiction to condone the delay.
11. Regarding the first contention based on the Hon'ble Supreme Court's order dated 10 January 2022, we agree with Mr Sharma that such a contention was never raised before the ITAT. Such a contention is not even mentioned in the Miscellaneous Application. Such a contention also finds no mention in the impugned order dated 03 November 2023. This argument is sought to be raised for the first time before this Court.
12. Still, we have considered the above argument. Paragraph 5(I) of the Hon'ble Supreme Court's order directs that the period from 15 March 2020 to 28 February 2022 shall stand excluded for the purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. Paragraph 5(II) clarifies

that, consequently, the balance period of limitation remaining as on 03 October 2021, if any, shall become available with effect from 01 March 2022.

13. In the facts of the present case, the Petitioner cannot claim any benefit of the above direction. This is because, even according to the Petitioner, the limitation period expired on 31 May 2022, i.e. beyond the period between 15 March 2020 and 28 February 2022. The Petitioner's contention that the limitation in this matter would commence only from 01 March 2022 cannot be accepted. This is not what the order which the Petitioner relies upon says.

14. Therefore, even though the plea based on the order of the Hon'ble Supreme Court was never raised by the Petitioner before the ITAT, still, upon consideration of the same, we find that the same would not assist the Petitioner in the facts of the present case.

15. Insofar as the second contention is concerned, the issue of sufficient cause is not quite relevant. Section 254 of the IT Act does not contain any provision that enables the ITAT to condone a delay beyond 6 months. This is so held by the coordinate bench in Ram Baburao Salve (supra).

16. Given the above position, sufficient cause, if any, would be irrelevant. The ITAT has also not gone into the issue of sufficient cause but by relying on the decision of the Karnataka High Court **Re. Karuturi Global Ltd. Vs. DCIT**² held that it has no power to condone the delay in entertaining an application under Section 254(2) of the IT Act.

² 2020 116 Taxmann.com 924 (Kar)

17. Since the ITAT's view aligns with that of our coordinate bench in Ram Baburao Salve (supra) and the decision of the Karnataka High Court in Re. Karuturi Global Ltd. (supra), we see no good ground to interfere with the impugned order.

18. For all the reasons stated above, we dismiss this petition and discharge the Rule without imposing any cost orders.

(Jitendra Jain, J)

(M.S. Sonak, J)