

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1833 OF 2018

Amore Jewels Private Ltd.Petitioner

V/s.

The Dy. Commissioner of
Income-tax

....Respondent

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Mr. Jehangir Mistri, Senior Counsel a/w. Mr. P.C.
Tripathi, Advocate for the petitioner.

Mr. Sham Walve, Advocate for respondents no.1 and 2.

CORAM :- **M.S. SANKLECHA, &**
SANDEEP K. SHINDE, JJ.

DATE : **3RD AUGUST, 2018.**

P.C. :-

1. At the request of the Learned Counsel for the parties, the petition itself is being disposed of at the stage of admission.

2. This petition under Article 226 of the Constitution of India challenges the order dated 4th May, 2013 passed by the Income-Tax Appellate Tribunal

(the Tribunal). The impugned order dated 4th May, 2013 dismissed the petitioner's Miscellaneous Application for rectification of order dated 13th February, 2015. This application was under Section 254(2) of the Income-Tax Act, 1961 (the Act).

3. The Tribunal, by its order dated 13th February, 2015 disposed of appeals filed by both the Revenue, as well as, the petitioner-assessee from the order dated 22nd December, 2010 of the Commissioner of Income-Tax (Appeals) (CIT (A)) relating to the Assessment Year 2007-08. The issue in the Appeal filed by the Revenue before the Tribunal was in respect of the CIT(A) accepting the investment made by Ms. Nirmala Bermecha in the petitioner's shareholding was a genuine investment and would not be hit by Section 68 of the Act. So far as, the petitioner's appeal before the Tribunal was concerned, it was in respect of the CIT (A) holding that the investment in shares by five corporate entities i.e. Coromandal Merchants P. Ltd, Maple

Mercantile P. Ltd., Criticare Marketing P. Ltd, Ziواني Barter P. Ltd and Deveraj Mercantile (P) Ltd. were not genuine investment in shares and therefore hit by Section 68 of the Act. At the time of regular hearing of the Appeal on 27th November, 2014, the petitioner had filed detailed written submissions making a reference to various case laws in support of their case and also a paper-book indicating the identity, creditworthiness and genuineness of the investments made by the above five corporate entities in the shareholding of the respondent-Company. The Appeal was heard on 27th November, 2014 and the order was passed by the Tribunal dismissing both the Revenue's, as well as, the petitioner-assessee's Appeal on 13th February, 2015. This according to the petitioner, was without considering their submissions.

4. It was in the above view, that the petitioner filed a Rectification Application on 1st February, 2018 under Section 254(2) of the Act. The Rectification

Application invited the attention of the Tribunal to the written submissions which were filed at the time of hearing in support of its case and in particular the binding decisions in support of their appeal. The impugned order dated 4th May, 2018 on the Rectification Application without addressing itself to the issues raised in the application proceeded to hold that the issue has been discussed threadbare in the order dated 13th February, 2015. Thus, no occasion to entertain the Rectification Application under Section 254(2) of the Act would arise.

5. Mr. Walve, opposes the petition and points out that the order passed by the Tribunal on 13th February, 2015, was an order which on considering all the material, concluded that the petitioner had failed to bring on record any positive material. Therefore, it is submitted that, this finding in the order dated 13th February, 2015 would itself indicate that there is no mistake apparent on the record of the order.

6. We find that, though the order dated 13th February, 2015 does render a finding that no positive material was brought on record, there is no discussion whatsoever of the various case laws detailed in the submissions which according to the petitioner clinches the issues in support of its case that the shareholding investment by the five Companies was genuine. In the above view, the Tribunal ought to have allowed the petitioner's Rectification Application and considered the petitioner's Appeal before it on merits, *inter-alia*, taking into account the material and case laws which has been already filed by the petitioner's during the hearing leading to the order dated 13th February, 2015.

7. In view of the peculiar facts of the present case, we are not only setting aside the impugned order dated 4th May, 2018 but also the order dated 13th February, 2018 to the extent it dismissed the petitioner's Appeal before it. This for the reason that, we find the order dated 13th February, 2015 in the

context of the material available on record, to be a non-speaking order as it gives no reasons to reject the appeal in the context of the decisions admittedly relied upon at the hearing by the petitioners.

8. In the above view, the petition is allowed in terms of prayer clauses (a) and (b).

(SANDEEP K. SHINDE, J)

(M.S. SANKLECHA, J)