

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO. 2471 OF 2019

Cavalier Trading Pvt Ltd

.. Petitioner

Versus

Dy. Commissioner of Income Tax - OSD-II, Central Range
7 & Anr.

.. Respondents

WITH
WRIT PETITION NO. 2477 OF 2019

Kalpitr Trading Pvt Ltd

.. Petitioner

Versus

Dy. Commissioner of Income Tax - OSD-II, Central Range
7 & Anr.

.. Respondents

-
- Mr. Devendra Jain a/w Ms. Radha Halbe for the Petitioner
 - Mr. Ashok Kotangle a/w P.A. Narayanan, Arun Nagarjun & Sakshi Pandhelkar for the Respondents
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CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.

DATE : JANUARY 31, 2020.

P.C.:

1. Heard Mr. Jain, learned counsel for the petitioner and Mr. Kotangle, learned standing counsel, revenue for the respondents.

2. Issue arising in both the writ petitions being the same, those have been heard together and are being disposed of by this common order.

3. However, for the sake of convenience, relevant facts may be noted from Writ Petition No. 2471 of 2019

4. This petition has been filed under Article 226 of the Constitution of India assailing the legality and correctness of order dated 13.3.2019 passed by the Income Tax Appellate Tribunal, "A" Bench, Mumbai ("**Tribunal**" for short) in M.A. No. 658/M/2018 arising out of Income Tax Appeal No. 4875/Mum/2014 for the assessment year 1999-2000.

4.1. From a perusal of the order dated 13.3.2019, it is seen that petitioner had challenged the order of the Commissioner of Income Tax (Appeals) restricting its profit to the extent of 1.5% of the sale and 1.5% on the purchase before the Tribunal by filing the related appeal. Initially, petitioner urged the following grounds:-

- "1. The CIT(A) is not justified in confirming or reducing the estimation from 3% to 1.5% on sale and purchases made / estimated by Assessing Officer in violation of principle of natural justice.
 2. He ought to have restricted the estimation upto 1% proposed by the Assessing Officer, in similar circumstances in group company's appeal being ITA No. 4876/Mum/2014 in his letter / SCN dated 20.7.2001.
 3. The CIT(A) is further not justified in reducing the addition / estimation to 1.5% from 3% on sales and purchases. He ought to have restricted 1% on sale or purchase either, not on both.
 4. The CIT(A) is not justified in confirming the rejection of audited book results without going into the background facts and compelling circumstances to save other's skin in the proceedings before the Settlement Commission.
- The appellant craves leave to add, amend and modify any of the above grounds of appeal."

4.2. Thereafter, during the pendency of the appellate proceedings, petitioner submitted an application dated 27.7.2017 seeking leave to file modified / amended grounds which were as follows:-

- "1. The CIT(A) is not justified in confirming or reducing the estimation from 3% to 1.5% on sale and purchases made / estimated by Assessing Officer in violation of principle of natural justice.
2. He ought to have restricted the estimation upto 1% proposed by the Assessing Officer in similar circumstances in group company's appeal being ITA No. 4876/Mum/2014, in his letter / SCN dated 20.7.2007.

3. The CIT(A) is further not justified in reducing the addition / estimation to 1.5% from 3% on sales and purchases. He ought to have restricted 1% on sale or purchase either, not on both.
4. The CIT(A) is not justified in confirming the rejection of audited book results without going into the background facts and compelling circumstances to save other's skin in the proceedings before the Settlement Commission."

4.3. The related appeal was heard by the Tribunal on 29.5.2018 and by order of even date, Tribunal affirmed the findings of the Commissioner of Income Tax (Appeals).

5. Petition filed a Misc. Application before the Tribunal under Section 254(2) of the Income Tax Act, 1961 ("**the Act**" for short) contending that the modified grounds were not considered by the Tribunal while disposing of the appeal.

6. Tribunal, by the impugned order dated 13.3.2019 took the view that the modified / additional grounds were nothing but reiteration of the basic issue which was restricting the profit of the petitioner. Therefore, Tribunal held that there was no mistake apparent in the face of the record within the meaning of Section 254(2) of the Act and

dismissed the Misc. Application.

7. On a query by the Court, learned counsel for the petitioner submits that as on date, petitioner has not filed appeal before this Court against the order passed by the Tribunal dismissing the appeal.

8. We have compared the grounds initially taken by the petitioner in the appeal as well as the grounds subsequently submitted by the petitioner contending those to be modified grounds. On considering the two sets of grounds, we find that Tribunal had rightly opined that the core issue for adjudication in the appeal before the Tribunal was restriction of profit of the petitioner on sale and purchase from 3% to 1.5%. In fact, the so-called modified or additional grounds were nothing but reiteration of the original grounds.

9. Section 254(2) of the Act provides that Tribunal may, at any time within six months from the end of the month in which the order was passed, with a view to

rectifying any mistake apparent from the record, amend any order passed by it while disposing of the appeal and shall make such amendment if the mistake is brought to its notice by the assessee or by the Assessing Officer. Substance of Section 254(2) of the Act is rectification of mistake apparent from the record. An error or mistake apparent from the record is one which is manifest on the face of the record. No long-drawn hearing is required for rectification of such mistake.

10. In the instant case, what we notice is that not only was there no mistake apparent from the record but in the garb of the Misc. Application, petitioner had sought for review of the final order passed by the Tribunal and for re-hearing of the appeal which is not permissible in law. In our view, Writ Petition does not appear to be bonafide.

11. In the light of the above, we dismiss both the Writ Petitions and impose cost of Rs. 10,000/- on each of the petitions on the petitioner. The costs be paid by the petitioner to the Maharashtra State Legal Services Authority

within two months from the date of this order.

12. Both the Writ Petitions are dismissed with cost as above.

[MILIND N. JADHAV, J.]

[UJJAL BHUYAN, J.]