IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ITA No.2 of 2023
Decided on: 31.10.2023

Shiva Educational Society ...Appellant

Versus

Principal commissioner of Income Tax-II, Chandigarh . ..Respondent

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Coram
The Hon'ble Mr. Justice M.S. Ramachandra Rao, Chief Justice
The Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge

Whether approved for reporting?

For the appellant: Mr. Vishal Mohan, Senior Advocate with Mr. Praveen Sharma and Mr. Aditya Sood, Advocates.

For the respondent: Mr.Vinay Kuthalia, Senior Advocate with Ms. Vandana Kuthalia, Advocate.

M.S. Ramachandra Rao, Chief Justice (Oral)

This ITA is preferred against the order dt. 6th June, 2023, passed by Income Tax Appellate Tribunal, Chandigarh, rejecting the Miscellaneous Application filed by the assessee seeking partial recall and rectification of its order passed in ITA No.490/Chd/2017 dt. 6th May, 2020.

2. The reasoning given by the said Tribunal for rejecting the application is that the Miscellaneous Application seeking partial recall and rectification was filed on 29.08.2022 and was thus time

barred by 267 days; that it was filed beyond the period of limitation; and the Tribunal did not have the express power of condonation of delay, if the delay exceeded period of six months from the end of the month in which the order is passed as per amended Section 254(2) of the Income Tax Ax, 1961.

3. Learned counsel for the appellant sought to contend that the Tribunal had wrongly noted the date of filing the Miscellaneous Application as 29.08.2022 and in fact the said application had been filed by the assessee on 25.08.2021 as is evidenced by Annexure A-5 Defect Memo issued by the office of said Tribunal on 02.09.2021.

4. Learned counsel for the appellant further placed reliance on the judgment dt. 10th January, 2022 of the Supreme Court in ***Suo Motu Writ Petition (C) No.3 of 2020***[1], wherein the Supreme Court had held that irrespective of period of limitation prescribed in any Statue for initiating any proceedings, on account of COVID 19 Pandemic, steps can be taken for initiating proceedings/appeals etc. even after 28.02.2022 by ignoring the period between 15.03.2020 and 28.02.2022 for the purpose of computing the period of limitation.

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[1] **2022 live Law (SC) 31**

5. This legal position is not disputed by learned counsel for the respondent-department though he stressed the point that Miscellaneous Application was filed on 29.08.2022.

6. But having regard to Annexure A-5, we are of the opinion that the Tribunal had wrongly noted the date of filing of the said application as 29.08.2022 and that the said application had been filed on 25.08.2021 itself, and would fall within the period mentioned in the above Supreme Court order. If the period between 06.05.2020 and 25.08.2021 is excluded on account of the Supreme Court order, the application of the assessee would be well within time.

7. Accordingly, the ITA is allowed. The impugned order dt. 6th June, 2023 in M.A. no.12/Chd/2022 is set aside and the matter is remitted back to the said Tribunal for consideration afresh on merits.

8. Pending miscellaneous application(s), if any, also stand disposed of

(M.S. Ramachandra Rao)
Chief Justice

(Jyotsna Rewal Dua)
Judge

October 31, 2023
(vt)