

ITAT's order couldn't be reviewed due to fresh arguments raised by assessee unless there was apparent mistake

Summary – The Hyderabad ITAT in a recent case of Pennar Aqua Exports (P.) Ltd., (the Assessee) held that where Tribunal had considered entire facts and case laws relied and by speaking order, rejected assessee's claim in respect of cash credit, no review could be made.

Facts

- The Assessing Officer found huge cash credit in the books of account of the assessee-company on the very first day it commenced its business. He disbelieved share capital introduced by 25 shareholders amounting to Rs. 38,40,000 and did not accept investment made by them.
- The assessee contended that company did not derive any income during relevant previous years. Investment was made by shareholders. Further, the Assessing Officer should have accepted their confirmation letter and their capabilities to invest.
- On appeal, the Commissioner (Appeals) allowed appeal of assessee by observing that business of the assessee had not yet commenced, there would not be any occasion for the company to earn unaccounted income and introduce it as share capital and deleted the addition by placing reliance on various decision more specifically on the judgments of the Supreme Court in case of *CIT v. Bharat Engg. & Construction Co.* [\[1972\] 83 ITR 187](#).
- The Tribunal considered the fact that the assessee had not dispensed the burden cast upon it with reference to the genuineness of the transaction and creditworthiness of the parties.
- The Tribunal found that though the assessee filed affidavit for 11 parties, there was no supporting evidence to show the agricultural holding of the above parties, the capacity to lend the money by these 11 parties was not proved by the assessee. Except the affidavits, there was no supporting materials. The Tribunal concurred with the view of the Assessing Officer in respect of 12 parties that for an amount of Rs. 17.10 lakhs there were no confirmation letter. The Tribunal also confirmed the order of the Assessing Officer on this issue.

Held

- A statutory authority cannot exercise power of review unless such power is expressly conferred. There is no express power of review conferred on this Tribunal. Even otherwise, the scope of review does not extent to re-hearing of the case on merit.
- The scope and ambit of application of section 254(2) is very limited. The same is restricted to rectification of mistakes apparent from the record. Recalling of the order is not permissible under section 254(2). Power to recall an order is prescribed in terms of rule 24 of the ITAT Rules, 1963, and that too only in case where the assessee shows that it had a reasonable cause for being absent at a

time when the appeal was taken up and was decided *ex-parte*. Judged in the above background the order passed by the Tribunal is indefensible.

- In the instant case, the Tribunal while deciding the appeal of the assessee considered the elaborate arguments advanced by the authorized representatives of both the parties. It is always the endeavour of the Tribunal that while passing the order it considers all the arguments of the parties.
- In its order, the Tribunal first meticulously mentioned the arguments of the assessee, the points raised by him then the relevant case laws relied upon by the the assessee. Thereafter, the Tribunal considered the same and passed a speaking order for not entertaining the claim of the assessee. While rejecting the claim of the assessee the Tribunal distinguished the judgment of Supreme Court in the case of *CIT v. Bharat Engg. & Construction Co.* [\[1972\] 83 ITR 187](#). Thus, the Tribunal is justified in rejecting the grounds taken by the assessee.
- Hence, it cannot be said that the Tribunal has not considered the case law cited by the assessee as alleged in the miscellaneous application.
- Further the Tribunal considered the entire facts and circumstances of the case and decided the issue. Being so, the Tribunal cannot review the same on the basis of fresh arguments advanced by the assessee.
- The Tribunal might have committed an error of judgment in wrongly applying/interpreting the judgment of the Supreme Court as mentioned on the matter, but the assessee is free to explore the remedy available under the law.
- In the result, the MA filed by the assessee is dismissed.