

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10495 OF 2013

Commnr. Of Income Tax, Guwahati-I Appellant(s)

VERSUS

M/s. Meghalaya Steels Ltd. Respondent(s)

WITH

CIVIL APPEAL NOS. 1619/2012, 4631/2012, 11223/2013,
795/2014, 1792/2014, 2410/2014, 6360/2014, 7727/2014,
7728/2014 and 8592/2014

O R D E R

The Civil Appeal No. 10495/2013 and Civil Appeal 1619 of 2012 arise out of two judgments delivered by the High Court of judicature at Guwahati. By the first judgment dated 16.09.2010 various points on merits were gone into, inter alia, as to whether deductions to be made under Section 80IB of the Income Tax Act, 1961 were allowable on facts and whether transport subsidies were or were not available together with other incentives. Ultimately the High Court after stating in paragraph 2 that two substantial questions of law arose under Section 260A of the Income Tax Act went on to answer the two questions. The first question so framed was answered in the negative, that is in favour of Revenue, and against the assessee. However, the second question was answered in the affirmative, in favour of the assessee, and against Revenue, and the appeal was disposed

of in the aforesaid terms.

Against the aforesaid judgment dated 16.09.2010, a Review Petition being No. 108/2010 was filed by the assessee before the very Division Bench. In a long judgment dated 08.04.2013, the Division Bench recalled its earlier order dated 16.09.2010 in the following terms:

"125. In the present case, since this Court did not formulate the substantial questions of law for adjudication before hearing of the appeal on merit, there can be no escape from the conclusion that hearing of the appeal prior to its admission has to be treated as a hearing on the admission of the appeal in order to determine if the substantial questions of law, as contended by the appellants, had or had not arisen and it was only upon having formulated the questions of law, which according to the High Court, were the substantial questions of law for adjudication in the appeal that the appeal could or ought to have been heard.

126. As the omission, on our part, to formulate the substantial questions of law and, then, invite the parties to have their say in the matter amount to denial of opportunity of effective hearing to the parties concerned, particularly, to the review petitioners, we must have the magnanimity and courage to acknowledge our mistake, recall the judgment and order dated 16.09.2010, and, then, decide the appeal, on merit, after having formulated the substantial questions of law, which this Court may deem necessary for adjudication of the appeal.

127. Because of what have been discussed and pointed out above, these review petitions succeed. The impugned judgment and order stand accordingly reviewed and recalled."

Mr. Radhakrishnan, learned Senior Advocate appearing on behalf of the Revenue, assailed the aforesaid judgment dated 08.04.2013 stating that it was factually incorrect that no substantial questions of law have been framed and that such questions are to be found in the very beginning of the judgment dated 16.09.2010 itself. He further argued, referring us to Section 260A (7), that only those provisions of the Civil Procedure Code could be looked into for the purposes of Section 260A as were relevant to the disposal of appeals, and since the review provision contained in the Code of Civil Procedure is not so referred to, the High Court would have no jurisdiction under Section 260A to review such judgment.

Mr. Gopal Subramaniam, learned senior counsel appearing on behalf of the assessee countered this submission. He pointed out to us that in point of fact the question as to whether there were substantial questions of law at all had been argued before the very Division Bench which Division Bench had in fact reserved order and then gone on to dispose of the appeal on merits without any pronouncement on whether there were substantial questions of law at all. The Division Bench, however, went ahead and by its judgment dated 16.09.2010 referred to two questions and went on to answer them. Insofar as the second submission of Mr. Radhakrishnan is concerned, Mr. Subramaniam argued that

the High Court being a Court of Record under Art. 215 of the Constitution of India, the power of review would inhere in it as such.

We have heard both the parties. We find that as a matter of fact what Mr. Subramaniam has argued before us is reiterated by the very Division Bench which heard and reserved judgment on 16.09.2010. By the review order dated 08.04.2013, the Division Bench felt that it should not have gone into the matter at all given the fact that on an earlier occasion, before 16.09.2010, it had reserved judgment on whether substantial questions of law in fact exist at all or not. This being the case, in a lengthy order the very Division Bench has thought it fit to recall its own earlier judgment.

In the above circumstances, we do not feel inclined to interfere with the impugned judgment in view of what has been recorded in the impugned judgment dated 08.04.2013. Insofar as the second question is concerned, we accept the submission of Mr. Subramaniam that High Courts being Courts of Record under Art. 215 of the Constitution of India, the power of review would in fact inhere in them. This was in fact so decided in a slightly different context while dealing with the power of review of writ petitions filed under Art.226 by a judgment reported in AIR 1963 SC 1909

(Shivdeo Singh & Ors. Vs. State of Punjab and Ors.). This

Court said:

"The other contention of Mr. Gopal Singh pertains to the second order of Khosla, J., which, in effect, reviews his prior order. Learned counsel contends that Art.226 of the Constitution does not confer any power on the High Court to review its own order and, therefore, the second order of Khosla, J., was without jurisdiction. It is sufficient to say that there is nothing in Art. 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. Here the previous order of Khosla, J., affected the interests of persons who were not made parties to the proceeding before him. It was at their instance and for giving them a hearing that Khosla, J., entertained the second petition. In doing so, he merely did what the principles of natural justice required him to do. It is said that the respondents before us had no right to apply for review because they were not parties to the previous proceedings. As we have already pointed out, it is precisely because they were not made parties to the previous proceedings, though their interests were sought to be affected by the decision of the High Court, that the second application was entertained by Khosla, J."

We are in respectful agreement with what is stated in the aforesaid judgment. Apart from what has been said by us, it is also clear that on a cursory reading of Section 260A (7), the said Section does not purport in any manner to curtail or restrict the application of the provisions of the

Code of Civil Procedure. Section 260A(7) only states that all the provisions that would apply qua appeals in the Code of Civil Procedure would apply to appeals under Section 260A. That does not in any manner suggest either that the other provisions of the Code of Civil Procedure are necessarily excluded or that the High Court's inherent jurisdiction is in any manner affected.

We accordingly dispose of all the above appeals with no order as to costs.

.....J.
(A.K.SIKRI)

.....J.
(ROHINTON FALI NARIMAN)

New Delhi;
Date: 5.8.2015.

ITEM NO.102
PH

COURT NO.12

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 1619/2012

C.I.T. GUWAHATI

Appellant(s)

VERSUS

M/S MEGHALAYA STEELS LTD.

Respondent(s)

(with appln. (s) for early hearing)

WITH

C.A. No. 4631/2012

(With Interim Relief and Office Report)

C.A. No. 10495/2013

(With Office Report)

C.A. No. 11223/2013

(With Office Report)

C.A. No. 795/2014

(With Office Report)

C.A. No. 1792/2014

(With Office Report)

C.A. No. 2410/2014

(With Office Report)

C.A. No. 6360/2014

C.A. No. 7727/2014

C.A. No. 7728/2014

(With Office Report)

C.A. No. 8592/2014

(With Office Report)

Date : 05/08/2015 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s)

Mr. K.Radhakrishnan, Sr. Adv.

Mr. K.Arijit Prasad, Adv.

Mr. S.A.Haseeb, Adv.

Mr. Jitin Singhal, Adv.

Mrs. Rashmi Malhotra, Adv.

Mrs. Gargi Khanna, Adv.

Ms. Sadhana Sandhu, Adv.

Mrs. Anil Katiyar, Adv.

For Respondent(s)

Mr. Gopal Subramanian, Sr. Adv.

Ms. Kavita Jha, Adv.

Ms. Mehak Gupta, Adv.

Mr. Ramesh Goenka, Adv.

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Mr. Sunil Murarka, Adv.

Mr. Kunal Chatterji, Adv.

Mr. Tavish Bhusan Prasad, Adv.

Mr. Saransh Kumar, Adv.

Ms. Sadhna Saxena, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeals are disposed of in terms of the
signed order.

(SUMAN WADHWA)
AR-cum-PS

(SUMAN JAIN)
COURT MASTER

Signed order is placed on the file.