CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

RA 260/95 in OA No.1390/1991

New Delhi, this 25th day of March, 1996

Hon'ble Shri B.K. Singh, Member(A)
Hon'ble Dr. A.Vedavalli, Member(A)

Shri P.R. Toora
E-14/F, DDA Flats, Munirka
New Delhi-110 067 .. Applicant
By Shri M.L. Ohri, Advocate

Versus

Union of India, through
1. Secretary General
Deptt. of Revenuese,
M/Finance, North Block, New Delhi
2. Chairman
Central Board of Direct Taxes
North Block, New Delhi
3. Shri W. Hasen
Commissioner of Income Tax, Kanpur .. Respondents
By Shri R.S.Aggarwal, Advocate

ORDER

Hon'ble Shri B.K. Singh

The Tribunal exercises the power of review in the background of Section 22(3)(f) of the AT Act, 1985 under the provisions of Order 47, Rule 1 read with Section 114 of the CPC. Review is possible when there is an error apparent on the face of the record; or when an important piece of evidence or document which in spite of due diligence could not be produced before the Tribunal at the time of hearing and which is available now; or for any other anologous and sufficient reason.

2. In the present review application, the prayer for review is based on the premise that the Tribunal has made incorrect observation in para 1 of its order dated 3.8.95, secondly the respondents were not restrained from conducting departmental proceedings but there was restriction on passing final order against the applicant and thirdly the Enquiry Officer has

exhonnerated the applicant of all the charges and as such the disciplinary authority should have accepted the recommendation of the EO and exhonnerated the applicant. It is stated that it was with malafide intention that the respondents filed SLP against the interim order before the Hon'ble Supreme Court which is still pending. It was further argued that the Tribunal did not take note of the judgement of the Hon'ble High Court of Delhi in the case of CIT Vs. Steller Investment Ltd., (1991) 99-CTR 40-41(DEL) (Annexure A-7 - page 142-143 to the OA) relating to assessment of share capital. This has been extracted and reproduced at page 11 of the RA. It is further mentioned that the Tribunal has also omitted to consider the judgement of Income Tax Appellate Tribunal, Delhi relating to share capital in case of M/s Standard Cylinders (Pvt.) Ltd., and the extracts of the same are reproduced at page 12 and 13 of the OA.

3. It is stated that the Tribunal has omitted to take note of the fact that the Department (Chief Commissioner of IT,. Delhi-I Shri P.K. Apachoo) on advice of the Senior Standing Counsel accepted the judgement of the Delhi High Court. He hammered the point that the respondents did not initiate any action in the case of other similarly situated officers but singled out the applicant for a departmental enquiry against him.

4. If we go strictly by order 47, rule 1 of the CPC we do not find any error apparent on the face of the record which can change the ratio of the judgement and the order dated 3.8.95. Secondly, the learned counsel for the applicant is

unable to produce any piece of evidence or document which can warrant a review of the order given by the Division Bench on 3.8.95. The judgements quoted by the learned counsel for the applicant are not applicable to the present case. Violation of fundamental rights under Articles 14 and 16 can not be invoked because assessment made by several officers similarly situated might have been scrutinised but it is possible that they did not find any fault or deficiency in those assessments of the officers and therefore they did not like to proceed against them. There might be some fault and deficiency in the assessment made by the applicant and therefore they decided to proceed against him. Once a charge-sheet is issued on the basis of some irregularity detected by the respondents, the Tribunal is not expected to pass any interlocatory order as has been held by the Hon'ble Supreme Court in a catena of judgements beginning with UOI Vs. Upendra Singh (SC)(1994) 27 ATC page 200 and also in the latest judgement whereby the the judgement/order of the State Administrative Tribunal, Madras has been set aside by observing that the Tribunal committed the gross error in quashing the charge-sheet the delinquent employee. The Hon'ble Supreme Court have laid down the law that the Tribunal is not competent to look into the correctness of the charge and the same does not fall within its domain unless it is proved that it is a case of no evidence or the charge-sheet issued to a person is inconsistent with the statutory rules or any article of the Constitution of India. Hundreds of officers make assessments and it is also true that these assessments are scrutinised after a long lapse of time and it may be found that during the course of scrutiny

some of the assessments may not be in conformity with the rules and regulations or may be irregular or may be based on ill-motive and only in such a case the Government have a right to proceed against an officer making such an assessment. If it is found that the assessments are not in conformity with the rules and regulations and government have sufferred a loss due to such assessment, they would be within their right to initiate disciplinary proceedings. Thus discretion is certainly vested in the disciplinary authority to initiate action where there is an act of omission or commission found in assessment and this is exactly what has been done in the case of the applicant.

It has been held by the Hon'ble Supreme Court in the case State Bank of India Vs. Samrendra Kishore Endow that the IO is not vested with the power of the disciplinary authority. The disciplinary authority may or may not agree with the findings of the IO and if he is not satisfied with the findings of IO, he is required to record reasons for his disagreement. The power under the rules to pass final order on an enquiry is vested in the disciplinary authority and the same can be modified by the appellate authority. Court/Tribunal is not vested with any authority to look into this. The power of judicial review under Article 226 is limited only to the manner in which the enquiry is conducted. It is only required to see whether the rule of natural justice has been followed or not. This view has been enunciated by the Hon'ble Supreme Court in case of State of Orissa & Ors. Vs. Vidya Bhushan Mahapatra AIR 1963 SC 779

and reiterated in case of State of AP Vs. Rama Rao AIR 1963 SC 1723. This view consistently was reiterated in case of UOI Vs. Parmanand 1989 SC 1135 and also in case of State Bank of India Vs. Samrendra Kishore Endow. The Hon'ble Supreme Court has held that neither the court nor tribunal is competent to look into the correctness of charge nor is it competent to look into the quantum of punishment. The same view has been reiterated in case of Govt. of Tamil Nadu & Anr. Vs. A. Rajapandian JT 1994 (7) SC 492. The Court and tribunal have been restrained by the Hon'ble Supreme Court from appreciating evidence or acting as a court of appeal over the findings of the disciplinary authority/appellate authority.

6. The judgement/order of the tribunal was in consonance with the various propositions of law laid down by the the Hon'ble Supreme Court. There is nothing in the review application which warrants review of the order already passed by the Tribunal. It also does not fall within the four corners of order 47, rule 1 and accordingly the same is being rejected under order 47 rule 4(1) of the CPC.

(Dr. A. Vedavalli)
Member(J)

(B.K. Singh)
Member(A)

/gtv/