IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH'GULESTAN' BUILDING NO:6
PRESCOT ROAD,BOMBAY:1

Review Petition No. 12/98, 13/98, 9/98, 10/98 and 11/98

Original Application No.: 524/95, 525/95, 526/95
527/95 and 528/95.

Dated the 10th day of December 1998.

CORAM: Hon'ble Shri D.S. Baweja, Member (A)

Ravindra Nivrutti Gaware ... Applicant in OA 524/95.

Santosh Bhiwaji Rane. ... Applicant in OA 525/95.

Girish Dattaram More. ... Applicant in OA 526/95.

Sangeeta Dhyandeo Gaikwad. ... Applicant in OA 527/95.

Sunil Vishnu Shivsharan. ... Applicant in OA 528/95.

By Advocate Shri P.A. Prabhakaran.

V/s.

Chief Commissioner of Income Tax
(Adm.) Aayakar Bhavan
M.K. Road, Mumbai.

Deputy Commissioner of Income Tax
(Adm.) Aayakar Bhavan.
M.K. Road, Mumbai. ... Respondents.

By Advocate Shri M.I. Sethna alongwith Shri Vadhavkar

O R D E R

(Per Shri D.S.Baweja, Member (A))

Review Petition No. 12/98 in OA 524/95, 13/98 in OA 525/95, 9/98 in OA 526/95, 10/98 in OA 527/95 and RP 11/98 in OA 528/95 have been filed by the applicants seeking review of the order dated 19.12.97 through which all the five O.As have been decided.

2. The Hon'ble Member who had passed the order dated 19.12.97 had since retired. Accordingly as per the rule a new Bench had been constituted and the Review Petitions had been listed for hearing.

3. Heard arguments of Shri P.A. Prabhakaran, counsel for the applicants and Shri M.I. Sethna alongwith Shri Vadhavkar counsel for the respondents.

4. Keeping in view the arguments advanced during the hearing and the averments made in the Review Petitions, it is noted that review of the order dated 19.12.97 is sought on the following grounds:

(i) As per the order dated 29.11.96, the reference to the M.P. filed by the applicant , the respondents were directed to file additional written statement clarifying the points, namely

(i) the precise rules under which the case of the applicant is said not to have covered.

(ii) the precise distinguishing factors in respect of other cases on which grant of compassionate appointments has been made.

The respondents did not submit any additional statement clarifying these points inspite of granting time again and again. The applicants have now been able to collect the relevant circulars governing the compassionate appointment which have been brought on record. It is the contention of the applicants that these circulars now brought on record

show that the cases of the applicants were not considered in proper perspective keeping the provisions of the circulars.

(ii) An M.P. has been filed subsequent of the filing of the Review Petition. Wherein the applicants has made additional averments in support of his grounds for seeking review. It has been brought out that the orders and judgements cited in the order dated 19.12.97 and relied upon by the Bench are not applicable to the case of the applicants.

(iii) The order dated 19.12.97 is exparte as there is no mention of the submissions made by the applicants particularly those brought out now in para 4.1 to 4.3 of the Review Petitions.

5. The respondents were issued notice to file written statement for the Review Petitions. However the respondents have not filed any written reply and have chosen to orally argue on the matter. The learned counsel for the respondents have strongly opposed the Review Petitions stating that neither any error apparent on the record has been brought out nor any new facts have been disclosed. If the respondents did not comply with the directions given in the order dated 19.12.97, then the adverse inference could be drawn. Respondents contended that all the cases have been considered on its own facts and the O.As have been dismissed as lacking merit. The respondents therefore strongly pleaded that the present Review Petitions are in the nature of appeal and therefore the same deserve to be dismissed.

6. After careful consideration of the rival arguments advanced during the hearing and the averments made by the applicants in the Review Petitions, I am inclined to agree with the submissions of the respondents. Taking the first ground of the applicant, it is noted that except one all the circulars which have now brought on record were issued before the filing of the O.A. and one circular dated 23.7.97 had been also issued before the passing of the order. If the respondents had failed to comply with the order dated 27.11.96, the applicants could have brought the relevant circulars on record in support of their case. The applicants have not brought out in the Review Petitions as to how these circulars were not in their knowledge earlier and how they have been able to collect the same now. In the absence of any such explanation, the plea of review of the order based in these circulars brought on record is not tenable. The second contention of the applicants is that the various judgement referred to and relied upon are not applicable to the case of the applicants. The judgements referred to in the order have been discussed indicating whether the particular order or the judgement is applicable on the facts and circumstances of the case or not. This is a matter of openion and cannot be construed as an error apparent on the record and form the ground for seeking review of the order. The third ground is that the order dated 19.12.97 is an exparte order as the contention of the applicants have not been taken into account. The order has been passed after considering all the aspects on merits after hearing the parties and cannot be termed as exparte.

7. From the submissions of the applicants in the Review Petitions, it is noted that an effort has been made to make out a case that the order dated 19.12.97 is erroneous on merits and same deserves to be considered after re-hearing the matter. In view of this, the present Review Petitions are more of an appeal in disguise than seeking review of the order. The Hon'ble Supreme Court in the case of M/s. Thungabhandra Industries Ltd. V/s. Government of Andhra Pradesh AIR 1964 SC 1372 has observed in para 11 that

> " a review is by no means as appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. Where without any elaborate argument one could point to the error and say there is a substantial point of law which stares one in the case and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out."

Keeping in view that is held by the Supreme Court, I am of the opinion that the applicants have not made out a case for review of the order dated 19.12.97 and the Review Petitions are more in the nature of appeal.

8. In the result, all the Review Petitions deserve to be dismissed and are accordingly dismissed. No order as to costs.

Member(A)

NS

order/Judgement despatched
to Applicant/Respondent (s)
on 24/12/98