

CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

REVIEW APPLICATION NO. 291/00005/2015

IN

ORIGINAL APPLICATION NO. 750/2013

&

MISC. APPLICATION NO. 291/00167/2015

In

REVIEW APPLICATION NO. 291/00005/2015

DATE OF ORDER: 18/6/2015

1. Praveen Kumar Beniwal S/o Shri Ram Prasad Beniwal, Age 32 years, R/o Plot No. C-498, Mahesh Nagar, Tonk Phatak, Jaipur presently working as Tax Assistant, in the office of Chief Commissioner of Income Tax, Statue Circle, Jaipur.
2. Banwari Lal Sharma S/o Shri Babu Lal Sharma, aged about 33 years, R/o Keshav Katla, VPO Khirni, Tehsil Malarna Doongar, District Sawai Madhopur, Rajasthan presently working as Tax Assistant, in the Office of Income Tax Officer(TDS-II), Income Tax Office, Statue Circle, Jaipur.
3. Rishabh Kumar Jain S/o Shri Paras Kumar Jain, aged about 31 years, R/o Ward No. 9, Nai Mandir Gali, Indergarh, District Bundi, Rajasthan presently working as Tax Assistant, in the Office of Income Tax Officer, Income Tax Office, Bundi.
4. Imran Khan S/o Shri Umrao Khan, aged about 33 years, R/o Plot No.117, Painter Colony, Nahri Ka Naka, Jaipur, Rajasthan presently working as Tax Assistant in the office of Chief Commissioner of Income Tax, Statue Circle, Jaipur.
5. Sunil Kumar Kankhedia S/o Shri Dhanpat Lal, aged about 34 years, R/o Plot No.63, Shri Kalyan Nagar, Kartarpura, Jaipur presently working as Tax Assistant, in the office Commissioner of Income Tax-I, Statue Circle, Jaipur.
6. Mukesh Kumar S/o Shri Rampal, aged about 31 years, R/o Plot No. B 4/156, Bal Nagar, Kartarpura, Jaipur presently working as Tax Assistant, in the office of Income Tax Officer, Ward No.2 (1), Statue Circle, Jaipur.

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7. Rekha Luniwal W/o Shri Ashutosh D/o Shri Jairam Luniwal, aged about 29 years, R/o Q. No.36/Type-III, Income Tax Colony, Calgiri Road, Near Rungta Hospital, Malviya Nagar, Jaipur presently working as Tax Assistant in the office of Income Tax Officer (MSTU), Income Tax Colony, Calgiri Road, Near Rungta Hospital, Malviya Nagar, Jaipur.
8. Mahesh Kumar S/o Shri Nattholi Ram, age about 29 years, R/o Quarter No.176/II, Income Tax Colony, Calgiri Road, Malviya Nagar, Jaipur presently working as Tax Assistant in the office of Commissioner of Income Tax-I, Jaipur, Statue Circle, Jaipur.
9. Kamlesh Kumar Sharma S/o Shri Ram Narayan Sharma, Age 32 years, R/o Plot No.43/3, Parasram Nagar, Dher Ka Balaji, Sikar Road, Jaipur presently working as Tax Assistant in the office of Commissioner of Income Tax-I, Jaipur, Statue Circle, Jaipur.

.....Applicants
(By Advocate-----)

VERSUS

1. The Union of India through Secretary, Ministry of Finance, Department of Revenue, Government of India, North Block, New Delhi.
2. Chief Commissioner of Income Tax, Central Revenue Building, Bhagwan Dass Road, Statue Circle, Jaipur.
3. Chairman, Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, North Block, New Delhi.
4. Director (Ad. VII), Ministry of Finance, Department of Revenue, CBDT, 469, Hotel Samrat, Chankypuri, New Delhi-110021.
5. Shri Ram Kishan Phulwaria S/o Shri Jhitu Lal Phulwaria, working as Sr. Tax Assistant, Income Tax Office, Behind Collectorate, Shekhawat Colony, Churu residing at Type II, Quarter, attach to Income Tax Office, Behind Collectorate, Shekhawat Colony, Churu.
6. Shri Mukesh Meena S/o Shri Sanvar Mal, presently working as Sr. Tax Assistant in the office of Director General of Income Tax (Investigation), NCR Building, Statue Circle, Jaipur residing at 24, Meeno Ki Dhani, Biharpura, Jahota, Tehsil Amber.

...Respondents

(By Advocate Mr. Gaurav Jain)

Anil Jain

ORDER
BY CIRCULATION

The present Review Application has been filed by the respondent nos. 1 to 4 for reviewing/recalling the order dated 31.03.2015 passed in OA No. 750/2013 with MA No. 291/00480/2014 (Praveen Kumar Beniwal & Ors. vs. Union of India & Others).

2. This Review Petition has been filed beyond the period of limitation and the respondents-department have filed a Misc. Application for condonation of delay. However, we are not convinced with the reasons given by the respondents-department for filing the Review Application beyond the period of limitation. Moreover, the Full Bench of the Andhra Pradesh High Court in the case of **G.Nara Simha Rao vs. Regional Joint Director of School Education** (W.P. 21738 of 1998) has already held that the Tribunal has no jurisdiction to condone the delay by taking aid and assistance of either sub-section (3) of Section 21 of the Administrative Tribunals Act or Section 29(2) of the Limitation Act.

3. Further the Hon'ble Supreme Court in the case of **K. Ajit Babu & Others vs. Union of India & Others**, 1997 SCC (L&S), in Para No. 4 has held that:-

".....The right of review is not a right of appeal where all questions decided are open to challenge. The right of review is possible only on limited grounds, mentioned in Order 47 of the Code of Civil Procedure. Although strictly speaking Order 47 of the Code of Civil Procedure may not be applicable to the tribunals but the principles contained therein surely have to be extended. Otherwise there being no limitation on the power of review it would be an appeal and there would be no certainty of finality of a decision. Besides that, the right of review is available if such an application is filed within the period of

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limitation. The decision given by the Tribunal, unless reviewed or appealed against, attains finality. If such a power to review is permitted, no decision is final, as the decision would be subject to review at any time at the instance of the party feeling adversely affected by the said decision. A party in whose favour a decision has been given cannot monitor the case for all times to come. Public policy demands that there should be an end to law suits and if the view of the Tribunal is accepted the proceedings in a case will never come to an end. We, therefore, find that a right of review is available to the aggrieved persons on restricted ground mentioned in Order 47 of the Code of Civil Procedure if filed within the period of limitation."

4. Therefore, this Review Application is not maintainable as it is filed beyond the period of limitation. Accordingly, the Misc. Application No. 291/00167/2015 for condonation of delay stands dismissed.

5. Even on merit the present Review Application is not maintainable. By means of this Review Application, the respondents-department is trying to reopen all issues decided by this Bench of the Tribunal in OA No. 750/2013 (Praveen Kumar Beniwal & Ors. vs. Union of India & Others) which is not permissible under the law for review proceedings.

6. The Hon'ble Apex Court has categorically held that the matter cannot be heard on merit in the guise of power of review and further if the order or decision is wrong, the same cannot be corrected in the guise of power of review. What is the scope of Review Petition and under what circumstance such power can be exercised was considered by the Hon'ble Apex Court in the case of Ajit Kumar Rath Vs. State of Orissa, (1999) 9 SCC 596 wherein the Apex Court has held as under:

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"The power of the Tribunal to review its judgment is the same as has been given to court under Section 114 or under Order 47 Rule 1 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47 Rule 1 CPC. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake of fact or error apparent on the face of record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the fact without any elaborate argument being needed for establishing it. It may be pointed out that the expression 'any other sufficient reason' used in Order XL VII Rule 1 CPC means a reason sufficiently analogous to those specified in the rule".

7. In our opinion, the grounds urged by the respondents-department do not warrant a review of the order dated 31.03.2015 passed in O.A. No. 750/2013. The grounds urged do not meet the necessary ingredients as set out under Order 47 Rule 1 of the Civil Procedure Code 1908 which is in pari-materia with Section 22 (3) (f) of the Administrative Tribunals Act, 1985.

8. The Hon'ble Supreme Court in the case of **State of West Bengal and Others Vs. Kamal Sen Gupta and Another-2008(3) AISLJ 231** by referring to Section 22 of the Administrative Tribunals Act, 1985 at Para 9 and 10 of the judgment held as under:-

"9. A reading of the above reproduced section makes it clear that even though a Tribunal is not bound by the procedure laid down in the CPC, it can exercise the powers of a Civil Court in relation to matters enumerated in clauses (a) to (i) of Sub-Section (3) including the power of reviewing its decision.

10. The power of a Civil Court to review its judgment/decision is traceable in Section 114 CPC. The grounds on

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which review can be sought are enumerated in Order 47 Rule 1 CPC, which reads as under:-

Order 47 Rule 1

1. Application for Review of Judgment-(1) Any person considering himself aggrieved:
 - (a) by a decree or order from which an appeal is allowed, but no appeal has been preferred.
 - (b) by a decree or order from which no appeal is allowed, or
 - (c) by a decision on a reference from a Court of Small Causes and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order."

9. By referring to Section 22 of the Administrative Tribunals Act, 1985, Section 114 read with Order 47 Rule 1 of CPC and after referring to the various judgments relating to the power of review of a Civil Court, at para 28 of the said judgment, the Hon'ble Supreme Court has laid down the following principles:-

"28. The principles which can be culled out from above noted judgments are:-

- (i) The power of Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a Civil Court under Section 114 read with Order 47 Rule 1 of CPC.
- (ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.
- (iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.
- (iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22 (3) (f).

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- (v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.
- (vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger Bench of the Tribunal or of a superior Court.
- (vii) While considering an application for review, the Tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of the declaring the initial order/decision as vitiated by an error apparent.
- (viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court/Tribunal earlier."

10. By applying the above principles laid down by the Hon'ble Supreme Court with regard to the power of the Tribunal to review its order/decision under Section 22(3) of the Administrative Tribunals Act, 1985, we do not find any patent error of law or facts in the order dated 31.03.2015 passed in OA No. 750/2013 (Praveen Kumar Beniwal & Ors. vs. Union of India & Ors.). Therefore, the present Review Application is liable to be dismissed.

11. Therefore, in view of the law laid down by the Hon'ble Apex Court, we find no merit in this Review Application and the same stands dismissed accordingly.

Chameli Majumdar
(SMT. CHAMELI MAJUMDAR)
JUDICIAL MEMBER

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER