

RESERVED

Court No. - 24

Case :- MISC. BENCH No. - 9239 of 2013

Petitioner :- Pradeep Kumar Kapoor

Respondent :- Income Tax Appellate Tribunal, Lucknow Bench 'Smc'
Lko.& Anr

Counsel for Petitioner :- Sachin Garg

Counsel for Respondent :- D.D. Chopra

Hon'ble Rajiv Sharma, J.

Hon'ble Dr. Satish Chandra, J.

(Delivered by Hon'ble Dr. Satish Chandra, J.)

By this writ petition, the petitioner has assailed the impugned order dated 18.06.2013, passed by the Income Tax Appellate Tribunal, Lucknow in I.T.A. No. 572/Lkw/2012, for the assessment year 2005-06.

The brief facts of the case are that the petitioner is a practicing Chartered Accountant. He is appearing before the Income Tax Appellate Tribunal to represent his clients. In ITA No.571/LKW/2012, he asked the adjournment, but the same was refused by the Hon'ble Judicial Member (Opposite party no. 2) and decided the appeal in favour of the assessee. The petitioner was present in the Court.

It is alleged that on 08.03.2013, the Bench clerk of the Tribunal asked the petitioner to sign the order-sheet dated 08.02.2013. Only then, the petitioner came to know that it is written that "**the petitioner had no reservation with this Bench**". The petitioner filed an application before the opposite party no. 2 to recall the noting on the order sheet dated 08.02.2013 and modified the same. The opposite party

no. 2 has referred the matter to the Vice-President, who observed that this may be dealt on judicial side. So, on 18.06.2013, the opposite party no. 2 passed impugned order and dismissed the petitioner's application dated 28.03.2013 with certain observations against the petitioner. In addition, a cost of Rs.5,000/- was imposed and reference was also made to the President of Institute of Chartered Accountant of India, New Delhi to take action against the petitioner. Being aggrieved, the petitioner has filed the present writ petition.

With this background, Dr. L.P. Mishra, learned Senior Counsel assisted by Sri Sachine Garg, learned counsel for the petitioner submits that basically, it is a dispute between two Members of the ITAT Bench. So, the adjournments were sought.

He Further submitted that the remarks and directions given in the impugned order are not in consonance with the dignity of practicing member of the Bar. The remarks and directions in the impugned order are not in accordance with the judicial decorum and propriety and against the dignity of the petitioner. The petitioner had advanced the arguments in the case on 08.02.2013 under the protest as the opposite party no. 2 has refused to adjourn the case. The same is against the normal practice in the Court. He read out the operative portion of the impugned order, which on

reproduction, read as under:-

"26. Moreover, during the course of hearing of appeal on 08/02/2013, Shri Pradeep Kumar has not shown any resentment or reservation with the Bench in arguing his case. He happily made the statement that he has no reservation with the Bench and he is ready to argue the case as per instructions from his client. Accordingly, the appeal was heard. Now after the disposal of appeal or even after 48 days from the disputed date of hearing the present application is moved disputing the facts recorded in the order sheet dated 08/02/2013 without any corroborative evidence. Even Shri Pradeep Kumar Kapoor has not filed the affidavit in support of his contentions despite the repeated directions of the Tribunal. Whenever the proceedings of the Court are disputed, it should be supported by an affidavit as there is presumption u/s 114(e3) of the Indian Evidence Act that judicial act have been regularly performed. Since the facts recorded in the order sheet have not been controverted by filing an affidavit, the judicial proceedings recorded on 08/02/2013 are correct in view of the provisions of Section 114(e) of the Indian Evidence Act, 1872 and the contentions raised in the application are highly misconceived, wrong and contemptuous. Therefore, I have no hesitation in holding that this application is highly misconceived, contemptuous and is moved with the intention to browbeat and scandalize the court. Since the action of Shri Pradeep Kumar Kapoor is gross abuse of process of law, I dismiss the application with the cost of Rs.5,000/- to be recovered as arrear of income tax from Shri Pradeep Kumar Kapoor, C.A. as this application was filed in his individual capacity and not on behalf of the assessee. This tough stand is being taken only to maintain the dignity and decorum of the institution and justice delivery system so that it may not be misused by any professional to settle their personal score. If they have any grievance against any judicial forum they may approach the higher forum instead of

scandalizing the concerned court/judicial body.

27. *Though an action for scandalizing the court can be taken under the contempt of Court Act but I refrain myself from doing so as I have already made reference to the Hon'ble High Court Allahabad against Shri S. K. Garg, Advocate and Shri Pradeep Kumar Kapoor, C. A. for Criminal Contempt of Court and the Hon'ble High Court has already taken cognizance thereof and the matter is sub judice before the Hon'ble High Court of Allahabad at Lucknow Bench. But I would like to make a reference to the President of Institute of Chartered Accountants with a request to take necessary action as per law against Shri Pradeep Kumar Kapoor for his professional misconduct and also to take corrective measures and necessary steps to educate its members to behave with the judicial authorities befitting to their status and should not be engaged in scandalizing the judicial authority/courts. Accordingly, the Registry is directed to send the copy of this order to the President – ICAI, Institute of Chartered Accountants of India, ICAI Bhawan, Indraprastha Marg, New Delhi – 110002 for necessary action in this regard. Copies of the order be also sent to Shri Pradeep Kumar Kapoor, C. A., the assessee and the Revenue/ Department for compliance of the order.*

28. *In the result, the application of Shri Pradeep Kumar Kapoor, C.A. Is dismissed with cost of Rs.5,000/- to be recovered as arrear of income-tax.”*

Lastly, he made a request that proper relief may kindly be provided to the petitioner by setting aside the impugned order.

On the other hand, Sri D.D. Chopra, learned counsel for the opposite party no. 1 has justified impugned order. He submits that impugned order was passed by the Judicial

Member, as per the direction of the Vice President of the Tribunal.

We have heard learned counsel for the parties at length and gone through the material available on record.

From the record, it appears that originally, the dispute was between Accountant and Judicial Members of the Tribunal and it was not functioning. So, adjournment was sought by the petitioner, but the same was refused. However, on 06.03.2013, the case of the petitioner was decided in favour of the assessee in his presence.

During the course of arguments, the petitioner has tendered his unconditional apology orally as well as in writing. When the petitioner has tendered his unconditional apology, no further adjudication is required. Matter is resolved in the Court.

It may be mentioned that Hon'ble Apex Court in the case of ***M.P. Special Police Establishment vs. State of M.P., 2004 (8) SCC 805***, held that :-

"In a situation of this nature, writ court while exercising its jurisdiction under Article 226 of the Constitution as also this Court under Article 136 and 142 of the Constitution can pass an appropriate order which would do complete justice to the parties."

Hence, by keeping in mind the ratio laid down by the

Hon'ble Apex Court (supra), we modify the impugned order and expunge the reference made by the Tribunal to the Institute of Chartered Accountant of India, and cancelled the cost of Rs.5,000/-, imposed by the Tribunal too. Adverse remark against the petitioner, if any, is also expunged.

We hope that in future such type of incident will not be repeated. It is in the interest of justice to maintain the dignity and decorum of the judicial system and the Tribunal is an essential part of it.

With the aforesaid observations, the writ petition is disposed of.

Order Date : 18.12.2013

Rakesh/-