

Sequeira

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1451 OF 2015

Hinduja Global Solutions Ltd.

.. Petitioner

Vs.

Union of India

Through the Secretary & ors.

.. Respondents

Mr.Farrokh Irani a/w Mr.Paras S.Savla, Mr.Harsh R.Shah, for the
Petitioner.

Mr.A.R.Malhotra a/w Mr.N.A.Kazi, for Respondents.

CORAM: M.S.Sanklecha

& N.M.Jamdar, JJ.

Thursday 16 July, 2015

P.C. :

Rule. Rule made returnable forthwith. Respondent waives service. By consent taken up for final disposal at the request of the counsel.

2 This petition challenges the order dated 4 March 2015 of the Income Tax Appellate Tribunal ("Tribunal") passed in respect of Assessment Year 2009-2010.

3 The orders of the Tribunal are amenable to challenge under Section 260A of the Income Tax Act, 1961 (the Act) before this Court. Therefore, normally we would not entertain a writ filed from an order of the Tribunal under the Act in view of an

alternative remedy by way of an appeal being available under the Act. However, we are constrained to exercise our extra-ordinary jurisdiction in view of the manner in which the impugned order has been passed by the Tribunal.

4 The issue before the Tribunal was regarding disallowance made on account of claim for deduction under Section 10A of the Act. This very issue was covered in favour of the Petitioner by the decision of the Tribunal for A.Y. 2005-2006 in the Petitioner's own case. The departmental representative before the Tribunal also accepted the position. In spite of the agreed position between the parties, the Tribunal by the impugned order yet remands this very issue to the Assessing Officer for fresh examination/determination. This is without in any manner even attempting to indicate why and how its earlier decision will not apply to the facts for the subsequent Assessment year. The Tribunal should not completely disregard its earlier order without some reason. This is the minimum expected of any quasi-judicial / judicial authority. If the Tribunal has failed to perform its basic judicial functions in such arbitrary manner, the approach of the Tribunal must be corrected, so as to ensure that such lapses do not occur again.

5 The Petitioner has informed us that the appeal for the subsequent Assessment year i.e. A.Y. 2007-2008 is scheduled to come up before the Tribunal in the month of August 2015 and for A.Y 2010-2011 the date has yet to be fixed by the Tribunal. The Petitioner seriously apprehends, and in our view not unjustifiably

that the Tribunal, while dealing with the Petitioner's appeal for the subsequent years may also restore the issue to the Assessing officer for *de novo* examination disregarding the earlier order. All this would happen without the Tribunal at any point of time considering for what reason is it's own order for the A.Y. 2005-2006 in respect of the Petitioner on identical facts, does not correctly decide the dispute.

6 It is in the aforesaid circumstances and primarily to correct the approach the Tribunal that we are constrained to exercise our extra-ordinary jurisdiction and set aside the impugned order of the Tribunal dated 4 March 2015 and restore it to the Tribunal for fresh consideration and disposal on merits, after addressing itself to it's earlier order passed for the A.Y 2005-2006 in respect of the Petitioners on merits. As far as the other issues decided by the impugned order, on merits, are concerned, it is open to the parties to adopt such remedies as are available to them in law.

7 The impugned order dated 4th March 2015 is set aside to the extent it has restored the issue of the petitioner's claim of deduction under Section 10A of the Act to the Assessing officer. The above issue is restored to the Tribunal for fresh disposal, in light of above.

Rule made absolute in above terms. No order as to costs.

(N.M.Jamdar, J.)

(M.S.Sanklecha, J.)