

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 16749/2023

(Arising out of impugned final judgment and order dated 15-03-2022 in ITA No. 48/2022 15-03-2022 in CM No. 12834/2022 passed by the High Court Of Delhi At New Delhi)

COMMISSIONER OF INCOME TAX

Petitioner(s)

VERSUS

M/S GRACEMAC CORPORATION

Respondent(s)

(FOR ADMISSION and I.R. and IA No.94174/2023-CONDONATION OF DELAY IN FILING)

Date : 03-07-2023 This petition was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE B.V. NAGARATHNA

HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA

For Petitioner(s) Mr. N Venakataaraman, A.S.G.
Mr. Raj Bahadur Yadav, AOR
Mr. Ashok Panigrahi, Adv.
Ms. Shivika Mehra, Adv.
Mr. Bhuvan Mishra, Adv.
Mr. Annirudh Sharma Ii, Adv.
Mr. Sabrish Subramaniam, Adv.

For Respondent(s) Mr. Nageswar Rao, Adv.
Mr. Ambhoj Kumar Sinha, AOR

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

It is noted that the issues raised in this special leave petition have been answered by a judgment by Three Judge Bench of this Court in Engineering Analysis Centre of Excellence Private Limited vs. Commissioner of Income Tax and Anr. reported in (2022)

3 SCC 321: (2021) SCC Online SC 159.

Learned ASG appearing for the petitioner submitted that a review petition as against the aforesaid judgment is pending before this Court and that the matter is to be heard in open Court. Therefore, this matter may be kept pending and later disposed of in terms of the order passed in the review petition.

Per Contra, learned counsel for the respondent has brought to our notice the order passed by this Court in the case of M/s MOL Corporation itself in SLP (C) Dy. No.7468/2023 which was dismissed on 06.04.2023.

Apart from this, it has also been brought to our notice by the learned ASG that in Microsoft Corporation (MS Corp) bearing SLP (C) Dy. No.7076/2023, a coordinate Bench of this Court by an order dated 20.03.2023 dismissed the special leave petition and liberty has been reserved to reopen and/or revive the special leave petition in the event the review petition in Engineering Analysis Centre of Excellence Private Limited (supra) is allowed.

In our view, as on today, Engineering Analysis Centre of Excellence Private Limited (supra) is holding the field. In the event, the aforesaid decision is overruled, that cannot have a bearing on the present case, as it will have an impact only on the judgment passed in Engineering Analysis Centre of Excellence Private Limited (supra) and the cases to be decided thereafter.

In other words, if once a judgment is passed by a Court following another judgment and subsequently the latter judgment is overruled on a question of law, it cannot have an effect of reopening or reviving the former judgment passed following the overruled judgment nor can the same be reviewed. This is having regard

to the Explanation to Order XLVII Rule 1 of the Code of Civil Procedure, 1908 (for short "CPC") which reads as under:

"Order XLVII Rule 1 CPC. Application for review of judgment.—

(1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which 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 order 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 the 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.

Explanation - The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment."

The explanation is also in the nature of an exception. In other words, the Explanation being in the nature of a proviso is a qualifying or an exception to what is stated in Order XLVII Rule 1 CPC which states the grounds for seeking a review. Hence, the object and intendment of the Explanation must be given its full effect. The object and purpose of the Explanation can be related to

the following three maxims:

- (i) Nemo debet bis vexari pro una et eadem causa (No man should be vexed twice for the same cause);
- (ii) Interest reipublicae ut sit finis litium (It is in the interest of the State that there should be an end to a litigation); and
- (iii) Res judicata pro veritate occipitur (A judicial decision must be accepted as correct).

These maxims would indicate that there must be an end to litigation otherwise, the rights of persons would be in an endless confusion and fluidity and justice would suffer. This is against public policy and not in the interest of the State.

The aforesaid explanation assumes significance in view of Article 137 of the Constitution and Order XLVII Rule 1 of the Supreme Court Rules, 2013.

In view of the above, we hold that as on today the judgment of a Three Judge Bench of this Court in Engineering Analysis Centre of Excellence Private Limited vs. Commissioner of Income Tax and Another (supra) is holding the field and therefore the said judgment would have to be followed in the instant case.

In view of the above, the special leave petition stands dismissed.

Pending application(s), if any, shall stand disposed of.

(RADHA SHARMA)
COURT MASTER (SH)

(MALEKAR NAGARAJ)
COURT MASTER (NSH)