

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND Ms. ASTHA CHANDRA, JUDICIAL MEMBER**

| M.A.No. | A.Y. | Name of Applicant | Name of Respondent/Revenue |
|---|--------------------|---|----------------------------|
| M.A.Nos.159 to 164/PUN/2023 in M.A. Nos. 01 to 06/PUN/2023 (Arising out ITA Nos. 447 to 452/PUN/2020) | 2007-08 to 2012-13 | M./s. Minakshi Builders, 83, Maniknagar, Nagar Pune Road, Ahmednagar 414 001 PAN : AANFM7812P | CIT(A)-2, Pune |

Applicant by : Shri Tushar Nagori (Virtual)
Revenue by : Shri Ramnath Murkunde
Date of hearing : 23.08.2024
Date of pronouncement : 23.08.2024

आदेश / ORDER

PER INTURI RAMA RAO, AM:

These Miscellaneous Applications are filed by the applicant seeking recall of the *ex parte* order dated 22.11.2022 passed by this Tribunal in appeals - ITA Nos. 447 to 452/PUN/2020 for the Assessment Years 2007-08 to 2012-13.

2. When the matter was called on, Mr. Tushar Nagori appeared and sought adjournment of hearing of the Miscellaneous Applications by citing that the ld. counsel who was to represent the matter was held up in the hearing before the ITAT, Mumbai Benches.

3. We find that this matter was earlier adjourned at the request of the applicant four times. The Hon'ble Supreme Court in the case of *Ram Siromani Tripathi & Ors Vs. State of U.P. & Ors in Civil Appeal Nos. 9142-9144 of 2010, dated 07.02.2019* held that the counsel who

was to argue the matter is out of station is no ground to seek adjournment. In view of the law laid down in the authoritative pronouncement of the Hon'ble Supreme Court, the inconvenience of the counsel who was to represent the matter on account of some other engagement cannot be a valid ground for adjournment. Therefore, the request for adjournment is declined. We therefore proceed to dispose of the present Miscellaneous Applications.

4. We had carefully perused the averments made in the present Miscellaneous Applications. At the outset, we find that this Tribunal had earlier disposed of the Miscellaneous Application Nos. 01 to 06/PUN/2023 filed in the same appeals vide order dated 24.05.2023.

5. Even in earlier Miscellaneous Application Nos. 01 to 06/PUN/2023, the applicant sought recall of the Tribunal order dated 22.11.2022. The Tribunal had declined in categorical terms the prayer for recall of the order for the reasons given therein. The Miscellaneous Applications were moved saying that the present Miscellaneous Applications may be treated as petitions under Rule 24 of the Income-tax (Appellate Tribunal), Rules 1963. We find contradictions in the averments made in the present Miscellaneous Applications. Vide para 4 of the present Miscellaneous Applications, the applicant has relied upon certain judicial precedents which are rendered in the context of provisions of Rule 24 of the Income-tax (Appellate Tribunal), Rules 1963. On the other hand, vide para 3, the applicant seeks modification of the order passed by this Tribunal in ITA Nos. 447 to 452/PUN/2020, dated 22.11.2022 invoking the provisions of section 254(2) of the Income-tax Act, 1961.

6. Assuming for a moment that the present Miscellaneous Applications are the petitions filed u/s.254(2) of the Income-tax Act, 1961, the same are barred by limitation. In the absence of express

power conferred by statute, Tribunal has no power to condone the delay in filing the petitions u/s.254(2) of the Act.

7. Vide para No.7 of the impugned applications, it is prayed that the present Miscellaneous Applications be treated as applications under Rule 24 of the Income-tax (Appellate Tribunal), Rules 1963 against the original order passed by this Tribunal on 22.11.2022 and also against the Miscellaneous Applications earlier disposed on 24.05.2023. The provisions of 'Rule 24' specifically lays down that if the applicant satisfies the Tribunal that there was sufficient cause for non-appearance when the appeal was called on for hearing, the Tribunal shall set-aside the *ex parte* order and restore the appeal. The provisions of 'Rule 24' are in *pari materia* with Order 9, Rule 13 of the Civil Procedure Code. The Courts while interpreting the provisions of Order 9 of Rule 13 of Civil Procedure Code had time and again laid down that the approach of the courts or Tribunal in deciding whether there was sufficient cause or not, is expected to consider whether or not the party was really interested to appear on the date fixed for the case; if he honestly intended to remain present and was not guilty of misconduct or gross negligence he should be given a chance. Reference can be made to the judgment of Hon'ble Bombay High Court in the case of *Rainbow Agri Industries Ltd. Vs. Income Tax Appellate Tribunal and Others* 266 ITR 38.

8. Even if the present Miscellaneous Applications are treated as applications under Rule 24 of the Income-tax (Appellate Tribunal), Rules 1963, on mere perusal of the earlier order passed in M.A.Nos. 01 to 06/PUN/2023 dated 24.05.2023, it would be clear that the Tribunal gave a categorical finding that the appellant had not shown any reasonable cause for non-appearance. In other words, the Tribunal had already dealt with the same cause of action. Therefore, the present

Miscellaneous Applications are only seeking the review of the order passed by the Tribunal in M.A.Nos. 01 to 06/PUN/2023, dated 24.05.2023. It is trite law that in the absence of express power conferred by the statute, the Tribunal has no power to review its own order. Thus, the present Miscellaneous Applications filed by the applicant are not maintainable and dismissed as such.

9. In the result, all the Miscellaneous Applications filed by the assessee are dismissed.

Order pronounced on this 23rd day of August, 2024.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 23rd August, 2024
Satish

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.