

(2011) 3 JCR 411

Jharkhand High Court

Case No: C.W.J.C. No. 7019 of 1998 (P)

Smt. Neeta Taneja

APPELLANT

Vs

Union of India (UOI)
and Income Tax
Tribunal

RESPONDENT

Date of Decision: June 14, 2011

Acts Referred:

- Income Tax (Appellate Tribunal) Act - Section 3
- Income Tax (Appellate Tribunal) Rules, 1963 - Rule 34A
- Income Tax Act, 1961 - Section 254(2)

Citation: (2011) 3 JCR 411

Hon'ble Judges: Prakash Tatia, Acting C.J.; Jaya Roy, J

Bench: Division Bench

Advocate: Anil Choudhary, for the Appellant;

Final Decision: Allowed

Judgement

1. Heard learned Counsel for the Petitioner.

2. The Petitioner is aggrieved against the order dated 11.02.1998 passed in I.T.A. No. 571/Pat/94 as well as subsequent orders dated 30.04.1998 and 09.06.1998 which, according to learned Counsel for the Petitioner, have been passed for only one prayer made by the Petitioner for review of the earlier order passed by the Tribunal as he raised a question of law which was not decided by the Tribunal while deciding Petitioner's appeal vide order dated 31.10.1997 (Annexure-3) and therefore, the Tribunal by exercising power u/s 254(2) of the Income Tax Act may hoar the matter afresh. The Petitioner's three applications submitted for the same prayer were rejected in chamber without giving an opportunity of hearing to the Petitioner and those orders have been communicated to the Petitioner vide letter dated 20.07.1998. The Petitioner placed on record a copy of the orders dated 11.02.1998, 30.04.1998 and 09.06.1998 which were

passed on Petitioner"s applications dated 20.01.1998, 29.04.1998 and 15.05.1998 respectively.

3. Learned Counsel for the Petitioner relied upon Rule 34A of the Income Tax (Appellate Tribunal) Rules provided for filing and disposal of the miscellaneous petition dealing with the procedure upon filing application u/s 254(2) of the Income Tax Act.

4. We have considered the submissions of the learned Counsel for the Petitioner and perused the impugned orders. The orders clearly indicate that the orders were passed in chamber without hearing the Petitioner and it is essentially required u/s 3 Rule 34A of the above Rule that before deciding the application, the Bench is required to give opportunity of hearing to the parties and proviso appended to Sub-Rule 3 of Rule 34A provides that it shall not be necessary to post miscellaneous application for hearing if prima facie it appears to be a petition for review and then Sub-Rule 4 further provides that an order disposing an application under Sub-Rule 3 showed by giving reason in support of such decision.

5. From the orders referred above it is clear that the orders have been passed without giving opportunity of hearing to the Petitioner and then Petitioner has submitted that before the Tribunal this point was specifically raised that if the amount in question of Rs. 2,32,961/- is not treated as a business loss and cannot be treated as bad debt then it is certainly a loss of the capital of the Petitioner. It is also submitted that in the order of the Tribunal at para 4.7 itself the Tribunal has held that the said loan become doubtful and therefore the assessment over the interest made by the Assessing Officer was deleted.

6. In view of the above, this petition deserves to be allowed and matter is remanded to the Tribunal for deciding the Review petition of the Petitioner afresh following the procedure as provided under Rule 34 (A) Sub-rule (3) of the Income Tax (Appellate Tribunal) Rules.