

BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI
Sh. Narinder Kumar, Member (J)

Review No.- 09/ATVAT/22
In Appeal Nos. 138-139/ATVAT/13
Date of Order : 10/01/2023

M/s Indus Valley Trading (P)
Ltd., 2485/8, 2nd Floor,
Karol Bagh, New Delhi.

.....Applicant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Applicant : Sh. H.C. Bhatia.
Counsel representing the Revenue : Sh. P. Tara.

Order

1. This order is to dispose of application filed u/s 76(13) of Delhi Value Added Tax Act (hereinafter referred to as DVAT Act), with prayer for review of the order dated 15/09/2022 passed by this Appellate Tribunal in Appeals No. 138-139/ATVAT/2013.
2. Vide judgment dated 15/09/2022, this Appellate Tribunal disposed of the above mentioned two appeals and remanded the matter to learned OHA for decision on the objections afresh, after providing reasonable opportunity to the dealer of being heard. Dealer was directed to appear before learned OHA on 28/09/2022.
3. As regards remand of the matter to learned OHA, the Appellate Tribunal observed in para Nos. 27,28, 29 and 30 in the manner as:-

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“27. A perusal of the impugned order would reveal that it stands clearly recorded therein that objector had produced documentary evidence and that detailed submissions were also put forth on behalf of the objector.

In this situation, Learned OHA was required to deal with each objection pressed before him, and decide the same while referring to the evidence produced and also give cogent and convincing reasons for arriving at the conclusion or rejection of the objections.....

28. From the above paragraph of the impugned order, it can safely be said that Learned OHA has approved the assessments framed by Learned Assessing Authority, without dealing with the submissions of the dealer - objector or without referring to the documentary evidence produced and without assigning any reasons. In the given situation, Learned Counsel for the Revenue has also rightly submitted that the matter needs to be remanded to Learned OHA for decision of the objections afresh.

29. As a result, both these appeals are disposed of and the matter is remanded to Learned OHA for decision on the objections afresh after providing reasonable opportunity to the dealer of being heard.

30. Dealer to appear before Learned Objection Hearing Authority on 28/09/2022.”

4. Prayer in the instant application seeking review of the judgment dated 15/09/2022 reads as under:-

- i.) To review its order dt. 15.9.2022;
- ii.) To hold that as the revenue had failed to produce any evidence to show that the VATO (Special Cell) had been delegated the power to make the assessment by the Commissioner, the assessment for the month of November 2011 under the DVAT Act, 2004 framed



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by the VATO (Special Cell) is without jurisdiction and.

iii.) To set aside the said assessment and allow the appeal.”

5. Arguments heard. File perused.
6. Regulation 24 of Delhi VAT (Appellate Tribunal) Regulations 2005 provides as to on which grounds application for review of an order lies.

Regulation 24 reads as under :

“1. Subject to the provisions contained in sub-section (2) of section 76 of the Act and the rules made there under, any person considering himself aggrieved by an order of the Tribunal 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 order was 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 order made against him, may apply for a review of the order within sixty days from the date of service of the order:

Provided that the Tribunal may at any time, review the order passed by it suo motu also for reasons to be recorded by it in writing.

2. Where it appears to the Tribunal that there is no sufficient ground for review, it shall reject the application.
3. Where the Tribunal is of opinion that the application for review should be granted, it shall grant the same:

Provided that-

(a) no such application shall be granted without previous



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notice to the opposite party to enable him to appear and be heard in support of the order, a review of which is applied for; and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the order was made, without strict proof of such allegation.”

7. In view of the above provision pertaining to review of order, any person feeling aggrieved by the order of the Appellate Tribunal is to satisfy that the review is being sought because of discovery of new and important matter or evidence and that the said matter or evidence which after the exercise of due diligence, was not within his knowledge or could not be produced at the time the order was passed by the Appellate Tribunal or on account of some mistake or error apparent on the face of record or for any sufficient reason.
8. Counsel for the Dealer-Appellant-Applicant has sought review of the judgment while submitting as under:-

- i.) The Judgment of Hon'ble Delhi High Court in Capri Bathaid Pvt. Ltd. was binding on this Appellate Tribunal and applying the same to the case of the dealer, this Appellate Tribunal should have held that the assessment was framed by VATO, who had not been delegated any powers to frame assessment.
- ii.) This Appellate Tribunal has not followed its own order in Playwell Impex in which the Judgment of Delhi High Court in Capri Bathaid was followed.

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- iii.) This Appellate Tribunal has held that appellant has failed to prove that the VATO, Special Cell had not been delegated the power to make the assessment u/s 32 of the DVAT Act, but in Playwell Impex's case, it was observed that the onus to prove this fact was on the Revenue; that appellant could not be called upon to prove said fact.
- iv.) That the case of the appellant squarely covered by the decision of Hon'ble Apex Court in Commissioner of Sales Tax, UP v. Sarjoo Prasad Ram Kumar (1976) STC 533 (SC) which was referred to and relied upon by the appellant.

In view of the above submissions, Counsel for the appellant has urged that the decision by this Appellate Tribunal suffers from error of law and as such the same be reviewed.

9. On the other hand, counsel for the Revenue has referred to provisions of Regulation 24 of Regulations and submitted that this is a case where this Appellate Tribunal disagreed with the contentions raised on behalf of the applicant on the point of jurisdiction of VATO to frame assessments, recording reasons and observing that the decisions in Capri Bathaid's case, Playwell Impex's case and Sarjoo Prasad Ram Kumar's case (supra) were not applicable to the facts and circumstances of this case, and as such review application deserves to be dismissed. It has also been contended that in case the dealer felt aggrieved by the judgment passed by this Appellate Tribunal, the dealer should have resorted to remedy of appeal instead of filing this review application, particularly

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when this is not a case where the judgment suffers from any error on the face of record.

10. It may be mentioned here that the objection as to the jurisdiction of VATO to frame the assessment was not raised in the memorandum of appeal. It was also not raised before learned OHA. It was allowed to be raised in the appeal.
11. While dealing with the objection raised on behalf of the appellant for the first time, at the time of final arguments, as regards jurisdiction to frame assessment, this Appellate Tribunal observed in para Nos. 15 to 25 as under:-

15. "As noticed above, impugned assessments came to be framed on 20/03/2012 by learned VATO (ward-207-Special Cell), u/s 32 and 33 of DVAT Act. The contention raised on behalf of the appellant is that there is nothing on record to suggest that there was any delegation of power to VATO (ward-207-Special Cell) to frame assessments qua the dealer and as such the impugned assessments framed deserve to be set aside. In support of this contention learned counsel has referred to decision in **M/s Capri Bathaid Pvt. Ltd. v. Commissioner of Trade & Taxes**, (2016) 90 VST 143 (Del.); **Commissioner of Sales Tax, Up v. Sarjoo Prasad Ram Kumar**, (1976) STC 533 (SC); and **M/s Playwell Impex Pvt. Ltd. v. Commissioner of Trade & Taxes, Delhi**, in Appeal No. 688-689/2013, decided by this Appellate Tribunal on 15/12/2021.

16. Reference has also been made to order no. F.2(7)/DVAT/L&J/2005-06/1028-1035 dated 31-10-2005, to submit that when there is no material on record to suggest, as to who delegated the powers to VATO (Special Cell) to frame assessments under DVAT Act and that the said VATO was having territorial

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jurisdiction, the impugned assessment framed by him, deserves to be set aside.

17. On the other hand, learned counsel for the Revenue has contended that it was for the dealer-appellant to prove its claim/objection that VATO (Special Cell) had no delegation of powers to frame assessments u/s 32 and 33 of DVAT Act, but the dealer-appellant has not brought on record any such material, and as such it cannot be said that VATO (Special Cell) made assessments without jurisdiction.
18. As regards decision in Capri Bathaid's case (supra), learned counsel for the Revenue has submitted that therein following question was one of the points which arose for consideration of the Hon'ble High Court:
"Whether the AVATO Enf-I who undertook the survey, search and seizure operation and later passed the default assessment orders of tax, interest and penalty, was duly empowered to do so in terms of the DVAT Act?"
Learned counsel has contended that here it is not case of the dealer-appellant that both the functions i.e. conducting of survey and framing of assessments, were performed by VATO (Special Cell). Rather, here survey was conducted by a team and VATO (Special Cell) was not a member of the said team, and as such decision in Capri Bathaid's case is not applicable to the present case.
19. During the relevant period, admittedly, order no. F.2(7)/DVAT/L&J/2005-06/1028-1035 dated 31-10-2005 was in force for the purposes of exercises of powers u/s 32 and 33 of DVAT Act. As per this order, all officers appointed under sub-section (2) of section 66 of DVAT Act, 2004, not below the rank of Assistant Value Added Tax Officer, were empowered to frame such assessments. Herein, indisputably, VATO (Special Cell) was an officer above the rank of AVATO.
20. In order to prove that VATO (Special Cell) who framed the impugned assessments had not been delegated any such powers in respect of the area, where the business premises of the dealer-appellant is situate, as provided u/s 78 of DVAT Act, it was for the dealer-appellant to discharge its burden. However, dealer has not brought on record any material to suggest that VATO (Special Cell) was never delegated powers. It should have collected



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relevant documents or certified copies thereof at the very initial stage for being placed on record, but no document in this regard has been produced to prove this objection.

21. In absence of any such material on record by the dealer-appellant, it cannot be said that VATO (Special Cell), had no jurisdiction or that he was not delegated with the powers to frame assessment u/s 32 of DVAT Act.
22. In Capri Bathaid's case (supra), Hon'ble High Court held that default notices of assessment of tax and penalty framed by the AVATO Enforcement-1 were wholly without jurisdiction, for the reasons recorded therein.
23. In Capri Bathaid's case the officers named in the authority in the form of DVAT 50, were authorized only to carry out audit investigation and enforcement and there was no delegation to carry out the powers of assessment. Here, no such point has been raised by learned counsel for the appellant.

As noticed above, here it is also not case of the dealer that VATO (Special Cell) had also conducted survey and subsequently framed assessments.

In the given fact and circumstances, and in view of the question referred to above dealt with by the Hon'ble High Court, I find merit in the contention raised by learned counsel for the Revenue that decision in Capri Bathaid's case does not come to the aid of the dealer-appellant. For the above reasons, there is no merit in the contention raised by learned counsel for the appellant that VATO (Special Cell) had no jurisdiction to frame the assessments.

24. So far as decision by this Appellate Tribunal in M/s Playwell Impex P. Ltd's case is concerned, therein dealer-appellant had brought on record sufficient material to hold that due process of law was not followed in delegation of powers to the VATO, who framed assessments u/s 32 and 33 of DVAT Act. Therein, the material produced on record included information collected from the Revenue in the form of a note approved by the Commissioner, VAT. In presence of the said note to prove delegation of powers to Sh. Bijendra Kumar, VATO therein, but in absence of any order passed on the basis of said note approved by the

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Commissioner, this Appellate Tribunal concluded that the assessments framed were without jurisdiction.

25. In that case, the onus initially put on the dealer-appellant u/s 78 of DVAT Act was discharged by the dealer with the production of record collected from Revenue, and it was thereupon that the onus shifted to the Revenue to prove the relevant order vide which AVATO (Enforcement-I) was actually delegated powers, after the Commissioner had approved the note regarding said delegation of powers. However, in that case, Revenue failed to discharge its onus so shifted.

Here, as noticed above, in this case dealer-appellant has not brought on record any material to discharge the burden to prove its claim/objection i.e. VATO (Special Cell) had no jurisdiction to frame assessment. Therefore, there is no question of shifting of onus from the dealer-appellant to the Revenue. Consequently, decision in M/s Playwell's case also does not come to the aid of the dealer.

For the same reasons i.e. for want of any material on record from the side of dealer-appellant, decision in Commissioner of Sales Tax, UP v. Sarjoo Prasad Ram Kumar's case (supra) does not come to the aid of the dealer-appellant."

12. On the scope of review of an order, it is well settled that there is difference between a mere erroneous decision and a decision which may be characterized as vitiated by "error apparent". In case of appeal, an erroneous decision is reheard and corrected, if so required. Review lies only in case of patent error. Power of review is not to be taken to be appellate power available to Appellate Court to correct all errors committed by the subordinate authority.

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An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of record. So, where an error has to be established by lengthy and complicated arguments, it would not be covered by the scope of review.

As regards non-applicability of decision in Capri Bathaid's case to the facts of the present case, reasons have been given by this Appellate Tribunal in the judgment, as noticed above.

Having regard to all the facts and circumstances, this Appellate Tribunal finds merit in the contention raised on behalf of the Revenue that the review is being sought simply because this Appellate Tribunal has disagreed with the contentions raised on behalf of the dealer-appellant at the time of arguments. There is no merit in the contention on behalf of the applicant that this is a good case for review on the ground that had the arguments advanced on behalf of the appellant been accepted by this Appellate Tribunal, the appeal would have been allowed.

13. As regards the onus to prove put on the dealer-appellant, on the point that the VATO had not been conferred with powers by way of delegation, to frame assessment, this Appellate Tribunal has already recorded reasons in the judgment. Reasons have also

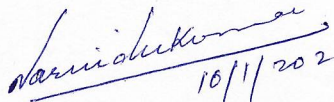
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been recorded in the judgment for non-applicability of decision by this Appellate Tribunal in Playwell Impex's case.

14. So far as non-applicability of decision in Commissioner of Sales Tax, UP v. Sarjoo Prasad Ram Kumar (1976) STC 533 (SC), to the facts of the present case, this Appellate Tribunal has already recorded reasons in the judgment, as noticed above.
15. As a result, I find that the judgment delivered by this Appellate Tribunal does not suffer from any error apparent on the face of record. In the given situation, in case the dealer felt aggrieved by the reasons and findings recorded by this Appellate Tribunal while disagreeing with the contention raised on behalf of the dealer, the appropriate remedy available to the dealer, as rightly submitted on behalf of the Revenue, was to file an appeal, and not to seek review.
16. The application is accordingly dismissed.
17. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.
Date: 10/01/2023


(Narinder Kumar)
Member (Judicial)

