

## One couldn't challenge time-limit of rectification application without specifying date of service of order

**Summary – The High Court of Madras in a recent case of S.P. Balasubrahmanyam, (the Assessee) held that where rectification application filed by assessee under section 254(2) after expiry of prescribed period of limitation of four years did not contain basic details such as when order was served on assessee and where his office was situated, same was rightly dismissed being barred by limitation**

### Facts

- In appellate proceedings, the Tribunal passed an *ex parte* order against the assessee. The assessee filed an application under section 254(2) seeking rectification of said order.
- The Tribunal finding that rectification application had been filed after expiry of period of four years from date of order, rejected same being barred by limitation.
- The assessee filed instant appeal contending that while computing prescribed period of four years, time taken in service of Tribunal's order was to be excluded.

### Held

- Reading of both, Rules 24 and 25 of the Income-tax Appellate Tribunal Rules, 1963, does not indicate any outer time limit prescribed for filing an application either by the appellant or respondent, as the case may be, to set aside the *ex parte* order and to restore the appeal on file. Rules have been framed enabling the appellant/respondent, before the Tribunal, who has suffered an *ex parte* order, to seek for setting aside the same and for restoration of the appeal. However, it could be noticed that under the guise of recalling an *ex parte* order, petitions are being filed, indirectly challenging the correctness of the order, under section 254, and to rectify the original order.
- As per section 253, appeal has to be filed within the prescribed time limit of 60 days, and such appeal has to be heard and disposed of within four years from the end of the financial year in which such appeal is filed under sub-section (1) or sub-section (2) of section 253. That being the case, miscellaneous application filed beyond the period of four years, is time barred.
- Even assuming that the period of limitation of four years for filing an application for recalling an order filed under section 254(2), has to be computed from the date of service of the order, averments made in the petition, filed in the year 2015, are bereft of details, as to when the order was served in the address, where the office of the appellant is situated. Order of the Tribunal has been passed on 18-7-2011, whereas, the assessee has filed the petition on 24-7-2015, which is beyond four years from the date of passing of the order by the Tribunal on 18-7-2011. Though assessee submitted that in the normal course, service of order, on the party would take sometime, and therefore the miscellaneous application filed on 24-7-2015 was just six days exceeding the four

years period from the date of passing the order and therefore, the Tribunal ought to have considered the time taken for service of the impugned order and allowed the application for rectification, the said contention cannot be accepted for the reason that, there are no averments in the miscellaneous petition, as to when the order was served on the appellant.

- Due diligence and caution, are the essential requirements. It is true that due diligence cannot be measured by any absolute standard but it depends on relative facts of a particular case. Due diligence is a measure of prudence by the litigant, who is expected to be reasonable and prudent, under the particular circumstances. In the case on hand, laches on the part of the assessee is apparent.
- In the light of aforesaid, there is no merit in the appeal and consequently, the same is dismissed.