IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1740 OF 2013

Bharat Petroleum Corporation Limited,]
3rd floor, Bharat Bhavan-2,]
4&6 Currimbhoy Road,]
Ballard Estate, Mumbai-400001.] ...Petitioner.

vs.

1. Income Tax Appellate Tribunal,]
Through its Registrar,]
Old CGO Building,3rd floor,]
M.K.Road, Mumbai-400020.]

2. Assistant Commissioner of Income]
Tax, Range 2(1), Mumbai,]
Room No.542, 5th floor,]
Aayakar Bhavan, M.K.Road,]
Mumbai 400 020.]

3. Union of India,]
Through the Secretary,]
Ministry of Finance, North Block,]
New Delhi-110 001.] ...Respondents.

Mr. J.D. Mistry, Sr. Advocate i/y Mr. Atul K. Jasani for the Petitioner.
Mr. Suresh Kumar for the Respondents.

CORAM : MOHIT S. SHAH, C.J. AND
M.S. SANKLECHA, J.

Reserved on : 20 September 2013
Pronounced on: 23 October 2013

JUDGMENT : (Per M. S. Sanklecha, J.)

Rule. Returnable forthwith.

2) At the instance and request of the Counsel for both the sides the petition itself is taken up for final disposal.

3) This petition under Article 226 of the Constitution of India assails the order dated 10 April 2013 passed by the Income Tax Appellate Tribunal ("the Tribunal"). By the impugned order dated 10 April 2013, the Tribunal dismissed the Miscellaneous Application filed by the petitioner seeking to recall its earlier order dated 06 December 2007 (dismissing the appeal for want of prosecution) in respect of Assessment Year 2000-01.

4) We are conscious of the fact that when an alternative remedy in terms of an appeal is provided under the Income Tax Act 1961, ("the Act") this Court would not normally entertain a writ petition. However, we have entertained this petition in view of the peculiar facts of this case. This petition is filed from an order dated 10 April 2013 dismissing a Miscellaneous Application for restoration of the petitioner's appeal dismissed by the Tribunal on 6 December 2007 for non prosecution. This Court in its order in the matter of Chem Amit vs. CIT 272 ITR 397 has held that no appeal under Section 260A of the Act would lie from an order

dismissing a Miscellaneous/rectification application of an earlier order of the Tribunal disposing of the appeal. In such cases, the appeal under Section 260A of the Act would be from the earlier order which in this case is dated 6 December 2007. In view of the above, no appeal would be available under Section 260A of the Act from the order dated 10 April 2013. However, as the issue raised in the petition is of crucial importance in the passing of orders under the Act by the Tribunal viz. the issue of interpretation of Rule 24 of the Income Tax Appellate Tribunal Rules, 1963 ("Tribunal Rules"), Section 254(1) and (2) of the Act we have entertained this petition in our extraordinary writ jurisdiction.

5) The issues which arise for consideration in the present petition are as under:

a) Whether the Tribunal has power in terms of Rule 24 of the Tribunal Rules to dismiss an appeal before it without considering the merits of the appeal and only on the ground for want of prosecution?

b) Whether the application for recall of an order dismissing the petitioner's appeal for want of prosecution is an application which falls for consideration under Section 254(1) of the Act or under Section 254(2) of the Act?

c) Whether in the event it is held in (b) above that the application is under Section 254(1) of the Act, is the Tribunal barred from

entertaining an application for recall of an order by any period of limitation or by laches on the part of the petitioner?

6) **Factual backdrop**:

a) The petitioner is a public sector undertaking engaged in the import of crude oil, refining and marketing the same. The petitioner is regularly assessed to tax under the provisions of the Act.

b) The petitioner filed its return of income for assessment year 2000-01 declaring taxable income of Rs.597 crores in its return of income. This income was determined inter alia after having claimed deduction under Section 80I & 80IB of the Act in respect of its LPG bottling plant.

c) The Assessing Officer by an order dated 31 December 2002, inter alia, disallowed the claim for deduction under Section 80I and 80IB of the Act and determined the taxable income at Rs.730 Crores. On appeal the Commissioner of Income Tax (Appeals) by order dated 24 March 2004 upheld the order of the Assessing Officer and dismissed the petitioner's appeal, thus leaving undisturbed the disallowance of deduction under Section 80I and 80IB of the Act claimed by the petitioner.

d) Being aggrieved by the order dated 24 March 2004 of the Commissioner of Income Tax (Appeals) the petitioner filed an appeal to the Tribunal. On 4 December 2007 the appeal was fixed for hearing before the Tribunal. The petitioner's executives i.e. Chief Manager (Finance) and Assistant Manager were to attend the hearing before the Tribunal, but were late in reaching the Tribunal. However, on reaching the Tribunal, they learnt that the petitioner's appeal had been called out and dismissed for want of prosecution. By order dated 6 December 2007 the appeal was dismissed by the Tribunal without considering the merits of the petitioner's case, only on the ground of want of prosecution, as none was present on behalf of petitioner.

e) On 18 December 2007, the petitioner received the order dismissing the petitioner's appeal. The order dated 6 December 2007 of the Tribunal records the fact that when the appeal was called out on 4 December 2007, none was present on behalf of the petitioner, therefore, the appeal was dismissed for want of prosecution.

f) The petitioner states that on receipt of the order dated 6 December 2007, the petitioner's executives initiated process of drafting a Miscellaneous Application seeking to recall the said order and for that purpose even had a meeting with their Counsel.

The Senior Officers of the petitioner were under the impression that the process of filing of Miscellaneous Application was complete and according to them they were waiting for a notice for hearing of the Miscellaneous Application from the Tribunal.

g) It was sometime in July 2012 (no specific date mentioned) when the petitioner was preparing for the hearing of its appeal for a subsequent assessment year, it noticed that though a draft Miscellaneous Application was in the file, an acknowledged copy of the same from the Tribunal, was not available in its record. On enquiry with the Tribunal the petitioner learnt that no Miscellaneous Application for recalling of the order dated 6 December 2007 was on the file of the Tribunal.

h) It was in the above circumstances that on 6 August 2012 the petitioner filed a Miscellaneous Application before the Tribunal seeking to recall the order dated 6 December 2007 passed by the Tribunal relating to assessment year 2000-01.

i) On 8 March 2013, the Tribunal heard the petitioner on its Miscellaneous Application. By an order dated 10 April 2013, the Tribunal dismissed the Miscellaneous Application on the ground that the application for recall had been filed beyond a period of 4 years from the date of the order dated 6 December 2007 of the Tribunal. Consequently, the Tribunal held that in view

of Section 254(2) of the Act it is not open to the Tribunal to entertain the application for rectification/amendment of an order beyond the period of 4 years from the date of the order being sought to be rectified/recalled. Alternatively, the Tribunal in the impugned order held that even if one proceeded on the basis that Section 254(2) of the Act is not applicable to an application for recall yet the same would be barred by limitation as the period provided under Limitation Act for setting aside an exparte order would be 30 days from the date of passing the order. Therefore, in view of inordinate delay of more than 4 years in filing on 6 August 2012 its Miscellaneous Application from order dated 6 December 2007 was dismissed.

j) This petition challenges the impugned order dated 10 April 2013.

Submissions:

7) Mr. J. D. Mistry, learned Senior Counsel for the petitioner in support of the petition challenging the impugned order dated 10 April 2013 urges the following:-

a) The original order passed by the Tribunal on 6 December 2007 on the petitioner's appeal is an order in breach of Rule 24 of the Tribunal Rules. This Rule mandates that when the

appellant before the Tribunal is not present and/or represented at the hearing then the Tribunal can only dispose of the appeal on merits after hearing the respondent and not for default. In the present case, order dated 6 December 2007 was an order dismissing the appeal only on account of want of prosecution i.e. without considering the merits of the appeal;

b) The Miscellaneous Application dated 6 August 2012 for recall of the order dated 6 December 2007 made by the petitioner is an application to be considered within the province of Section 254(1) of the Act. However, the Tribunal misdirected itself by treating the application for recall as an application for rectification under Section 254(2) of the Act and not under Section 254(1) of the Act;

c) The application dated 6 August 2012 for recall was made by the petitioner under the proviso to Rule 24 of the Tribunal Rules which does not provide for any period of limitation. Thus, such an application is appropriately required to be considered by the Tribunal under the proviso to Rule 24 of the Tribunal Rules without incorporating any period of limitation therein;

d) The delay in moving the Miscellaneous Application on 6 August 2012 for recall of order dated 6 December 2007 was on

account of genuine mistake /mis-understanding and no sooner the appellant realized the same in July 2012 an application was filed within a month for recall of the same. Thus, in the facts of the case, there was no delay and/or laches on the part of the petitioner; and

e) The interests of justice would require that the order dated 6 December 2007 be recalled and the matter be heard on merits. This is for the reason that the petitioner's representatives were not present at the time when the matter was called out by the Tribunal but reached soon thereafter to be informed that the matter has been dismissed. However, the petitioner's representative were unable to mention the appeal before the Tribunal on that very day to apply for recall of the order dismissing its appeal only on account of such a practice of mentioning not being permitted by the Tribunal. Consequently, the petitioner was unable to have the order of dismissal for non-prosecution recalled on 4 December 2007 itself and correct the injustice.

8) On the other hand, Mr. Suresh Kumar, learned Counsel on behalf of the revenue submits that the impugned order dated 10 April 2013 passed by the Tribunal calls for no interference and in support submits as under:-

a) The impugned order dated 10 April 2013 has been passed on an application made for recall of an order dated 6 December 2007 under Section 254(2) of the Act. In these circumstances, as the application filed by the petitioner is beyond the period of 4 years, the Tribunal has no jurisdiction to entertain the application. Thus the application dated 6 August 2012 has rightly been dismissed by the impugned order.

b) Without prejudice to the above, even if it is assumed that the application filed by the petitioner appropriately falls for consideration under Section 254(1) of the Act, the same has rightly been held to be barred by limitation. This is on account of the fact that the period of 30 days as provided under the Limitation Act would apply for setting aside an exparte order i. e. 30 days from the date of the order.

c) In any event, it is submitted that even if, it is held that no period of limitation has been provided for application made under Section 254(1) of the Act and the period of limitation under the Limitation Act is inapplicable, yet the impugned order is justified in dismissing the application on the ground of laches. For the purpose of considering the period of laches the period of 4 years provided under Section 254(2) of the Act has appropriately been taken as the outer most limit for filing the application for

recall which could then be considered on merits of the application including the delay, if any, if not more than 4 years.

d) The order of which recall has been sought is dated 6 December 2007. The aforesaid order was received by the appellant on 18 December 2007. At no point of time prior to August 2012 did the petitioner make any movement to have the order dated 6 December 2007 recalled. The period to consider the limitation/ laches commences from 18 December 2007 and not from July 2012 as urged on behalf of the petitioner.

Statutory Provisions:

9) Before dealing with the submissions of the Counsel, it may be convenient to reproduce the relevant provisions of the Act and Tribunal Rules which would have a bearing in considering the submissions made by the Counsel.

Orders of Appellate Tribunal

> Section 254 : (1) The appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.
>
> (2) The Appellate Tribunal may at any time within four years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under

sub-section (1), and shall make such amendment is the mistake is brought to its notice by the assessee or the [Assessing] Officer:

Provided that an amendment which has the effect of enhancing an amount or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this sub section unless the Appellate Tribunal has given notice to the assessee of its intention to do so and has allowed the assessee a reasonable opportunity of being heard.

Provided further.....

Rule-24 of the Income Tax Tribunal Rules [Hearing of appeal ex parte for default by the appellant.

Where, on the day fixed for hearing or on any other date to which the hearing may be adjourned, the appellant does not appear in person or through an authorized representative when the appeal is called on for hearing. The Tribunal may dispose of the appeal on merits after hearing the respondent:

Provided that where an appeal has been disposed of as provided above and the appellant appears afterwards and satisfies the Tribunal that there was sufficient cause for his non appearance, when the appeal was called on for hearing, the Tribunal shall make an order setting aside the ex parte order and restoring the appeal.]

Findings :

10) We have considered the rival submissions. Before dealing with the submissions on merits we wish to point out that this entire exercise of filing an application for recall of an order dated 6 December 2007 may not have been necessary if the Tribunal allowed/permitted the practice of mentioning matters before it, atleast at one time during the course of the day. In this case it is the petitioner's case (not disputed by the revenue) that on 4 December 2007 when the petitioner's matter was listed for hearing before the Tribunal the petitioner's executives happened to reach the Tribunal late as they were held up in a traffic jam. However, in the meantime the petitioner's appeal was called out and as none was present on behalf of petitioner, the appeal was dismissed for non-prosecution. On reaching the Tribunal the petitioner's executives learnt about the dismissal of its appeal from the Court Master. However, the petitioner was unable to mention the above facts before the Tribunal so as to make a request to the Tribunal to recall the order dismissing its appeal. We are informed that practice of mentioning is not permitted/ allowed by the Tribunal at any time of the day. If so, we find this a little strange. The ultimate object of the Tribunal is to decide a lis/dispute between the revenue and assessee in accordance with law to ensure that justice is done. In the aid of ensuring that justice is

done, the Tribunal cannot as a matter of practice bar any Advocates/representative from mentioning their matters before the Tribunal. If indeed this is so, the Tribunal must do away with such a practice. The mentioning of matters should be allowed by the Tribunal. It is of course in the Tribunal's discretion to allow the request made by the parties while mentioning but prohibiting mentioning of matters before a Court/Tribunal is a likely recipe for injustice. In case the Tribunal is following the practice of not allowing mentioning of matters before it, we would request the Tribunal to henceforth do away with such a practice and allow mentioning of matters. It is made clear whether or not to allow the application made on mentioning by the parties is for the Tribunal to decide in exercise of its discretion.

11) Now turning to the merits of this petition, it is contended by the petitioner that the order passed on 6 December 2007 on its appeal was an order passed in breach of Rule 24 of the Tribunal's Rules. We find that when the appellant is not present before the Tribunal when the appeal is called out for hearing the Tribunal could either adjourn the hearing of the appeal in its inherent jurisdiction or in terms of Rule 24 of the Tribunal Rules dispose of the appeal on merits after hearing the respondent. In this case the Tribunal has dismissed the petitioner's appeal for non prosecution. The Tribunal has not considered the merits nor heard the respondents on merits before dismissing the appeal. Thus the

Tribunal has not exercised its inherent jurisdiction of adjourning the appeal or in terms of Rule 24 of the Tribunal Rules of deciding the appeal on merits after hearing the respondents. We find that in terms of Rule 24 of the Tribunal Rules the option of dismissing an appeal for default is not available to the Tribunal. In fact, Income Tax Appellate Tribunal Rules 1946 as amended in 1948 (Tribunal Rules 1946) provided for dismissal of appeal by the Tribunal for default on the part of the appellant before it. Rule 24 of the Tribunal Rules 1946 as amended in 1948 reads as under:

> *"24- Where on the day fixed for hearing or any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Tribunal may, in its discretion either dismiss the appeal for default or may hear it ex-parte."*

The aforesaid Rule allowing the Tribunal to dismiss an appeal for non prosecution/default was a subject matter of challenge before the Supreme Court in CIT vs. S. Chenniappa Mudaliar (1969) 74 ITR Page 41 and the Apex Court held that such a provision in the rule was ultra vires the provisions of the parent Act viz. Section 33(4) of the Income Tax Act, 1922 which mandated the Tribunal to decide the appeal on merits. Therefore, we find that Rule 24 of the Tribunal Rules as applicable in this case advisedly does not provide for dismissal of appeal for default.

12) At this stage it was faintly suggested by the revenue that such a power of dismissal for default can be exercised by the Tribunal in exercise of its inherent powers as judicial/quasi judicial authority. This course is not open to the Tribunal as the Apex Court in S. Chenniappa Mudaliar (supra) has held that the Tribunal is mandated by Section 33(4) of the Income Tax Act 1922 (1922 Act) to decide the appeal before it on merits. Section 33(4) of the Income Tax Act, 1922 read as under:-

> "33(4) The Appellate Tribunal after giving both the parties to the appeal an opportunity of being heard pass such orders thereon as it thinks fit and shall communicate any such order to the assessee and to the Commissioner".

The provisions of Section 254(1) of the Act though reproduced herein above are again reproduced for convenience and read as under:-

> "254(1) The appellant Tribunal may after giving both the parties to the appeal an opportunity of being heard pass such order thereon as it thinks fit.

It would therefore, be noted that Section 33(4) of the 1922 Act and Section 254(1) of the Act are almost identically worded. Thus it is not open the Tribunal to exercise its inherent powers to

dismiss the appeal for default as the mandate of Section 254(1) of the Act is to dispose of the appeal on merits even in the absence of the appellant. This would logically follow from the decision of the Apex Court in S. Chennippa Mudaliar (supra).

13) This Court in the matter of **Chemipol vs. Union of India (244) E.L.T. 497 (Bom.)** while dealing with the powers of Customs Excise and Service Tax Appellate Tribunal to dismiss an appeal for default has observed that though every Court or Tribunal has an inherent power to dismiss the proceeding for non prosecution yet this inherent power is lost where the statute requires the Court or the Tribunal to hear the appeal on merits. In this case Rule 24 of the Tribunal Rules mandates the Tribunal to decide the appeal on merits even in absence of the appellant after hearing the respondents. In view of the above, we hold that the Tribunal did commit an error in passing the order dated 6 December 2007 in dismissing the appeal on the ground of want of prosecution. Therefore, in such a case the appellant (i.e. petitioner herein) is entitled to move the Tribunal to set right the breach of Rule 24 of the Tribunal Rules and have an order passed in breach thereof to be set aside.

14) The next issue that arises for consideration is whether an application to set right the above error in the order dated 6 December 2007 would be an application to correct the same under

Section 254(1) of the Act as contended by the petitioner or under Section 254(2) of the Act as contended by the revenue. It was submitted by the petitioner that Section 254(2) of the Act is not applicable in the present facts as there is no mistake apparent on record in the order dated 6 December 2007. Therefore, such an application to recall the order dated 6 December 2007 would not fall under Section 254(2) of the Act. We find that the order dated 6 December 2007 does suffer from an error apparent on the face of the record namely dismissing the appeal on account of non prosecution in breach of Rule 24 of the Tribunal Rules. The Tribunal has no power to dismiss the application on the ground of non prosecution (as urged by the petitioner and accepted by us) keeping in view Rule-24 of the Tribunal Rules. Therefore, dismissing an appeal for non prosecution in the face of Rule 24 of the Tribunal Rules is an error apparent on the face of the record leading to an irregular order which can be rectified under Section 254(2) of the Act. In fact during the course of hearing the petitioner placed reliance on the Bombay High Court decision in **Khushalchand B. Daga vs. T.K. Surendran and others (1972) 85 ITR 48** to support its view that the Tribunal cannot dismiss an appeal for default. In the case of Khushalchand B. Daga (supra) this Court held that in view of Rule 24 of the Tribunal Rules 1946 as then existing the Tribunal cannot dismiss an appeal for non prosecution in view of the decision of the Supreme Court in the matter of S. Chenniappa Mudaliar (supra). However, it further also

held that such an order dismissing an appeal for default of appearance by the Tribunal was an order which suffered from an error apparent on the face of the record. We are of the view that in the above circumstances if there is an error apparent on the face of the record, Section 254(2) of the Act alone is applicable. Where Parliament has provided a specific provision in the Act to deal with a particular situation, it is not open to ignore the same and apply some other provision. Section 254(2) of the Act empowers the Tribunal to correct/rectify its order only within four years from the date of the order which is sought to be rectified. In this case it is an admitted position that the miscellaneous application is filed on 6 August 2012 i.e. beyond four years of the order dated 6 December 2007 which is sought to be rectified.

15) It was next contended that in any event Section 254(2) of the Act would have no application on the ground that Miscellaneous Application made in August 2012 is under the proviso to Rule 24 of the Tribunal Rules which does not have any period of limitation. Moreover in such cases, it is contended that the application is not to rectify an error in the order but is an application to set aside an order. We find that the miscellaneous application made by the petitioner on 6 August 2012 could not have been made under the proviso to Rule 24 of the Tribunal Rules. This is for the reason that the proviso would be applicable only when the Tribunal has exercised its power on the basis of the

main part of Rule 24 of the Tribunal Rules i.e. deciding the appeal on merits after hearing the respondents. This would be evident from the fact that the proviso to Rule 24 of the Tribunal Rules clearly states:-

> "Provided that where an appeal has been disposed of as provided above and the appellant appears afterwards....."

Thus the application of the proviso can only take place where the main part of Rule 24 of the Tribunal Rules has been applied for dismissing the appeal i. e. appeal has been disposed of on merits after hearing the respondents, in the absence of the appellant. In this case admittedly the main part of Rule 24 of the Tribunal Rules has not been applied and therefore, no occasion to invoke the proviso thereto can arise. The proviso to Rule 24 of the Tribunal Rules has no application where there is an error apparent on record. The invocation of the proviso takes place when the Tribunal has correctly disposed of the appeal before it in terms of the main part of Rule 24 of Tribunal Rules. Consequently, in the present facts the issue of application of either Rule 254(1) or (2) of the Act to an application made under the proviso to Rule 24 of the Tribunal Rules does not arise.

16) It was next contended on behalf of the petitioner that the power of the Tribunal under Section 254(2) of the Act is only

to rectify an error apparent from the record. It does not empower the Tribunal to recall its earlier order dated 6 December 2007 for which the miscellaneous application was filed on 6 August 2012. It was submitted on behalf of the petitioner that the application under Section 254(1) of the Act would be the only provision under which an application could be made for recall of an order, as under Section 254(2) of the Act only the order can be rectified but cannot be recalled. We find that there is an error apparent on record and the miscellaneous application is to correct the error apparent from the record. The consequence of such rectification application being allowed may lead to a fresh hearing in the matter after having recalled the original order. However, the recall, if any, is only as a consequence of rectifying the original order. It is pertinent to note that Section 254(2) of the Act does not prohibit the recall of an order. In fact the power/jurisdiction of the Tribunal to recall an order on rectification application made under Section 254(2) of the Act is no longer res-integra. The issue stands covered by the decision of the Apex Court in **Assistant Commissioner of Income Tax vs. Saurtashtra Kutch Stock Exchange Limited (2008) 305 ITR 227** which held that though the Tribunal has no power to review its own order, yet it has jurisdiction to rectify any mistake apparent on the face of the record and as a consequence therefore, Tribunal can even recall its order. In the above case before the Apex Court on 27 October 2000 the Tribunal dismissed the appeal of Stock Exchange holding

that it was not entitled to exemption under Section 11 read with Section-12 of the Act. On 13 November 2000 the Stock Exchange filed a rectification application under Section 254(2) of the Act before the Tribunal. The Tribunal by its order dated 5 September 2001 allowed the application and held that there was mistake apparent on the record which required rectification. Accordingly, the Tribunal recalled its order dated 27 October 2000 for the purpose of entertaining the appeal afresh. The revenue filed a writ petition in the Gujarat High Court challenging the order dated 5 September 2001. The above challenge by the revenue was turned down by the Gujarat High Court. The revenue carried the matter in appeal to the Apex Court which also dismissed the appeal of the revenue. The Apex Court observed that the Tribunal in its original order while dismissing the Stock Exchange (assessee's) appeal overlooked binding decisions of the jurisdictional High Court. This mistake was corrected by the Tribunal under Section 254(2) of the Act. The Supreme Court held that the rectification of an order stands on the fundamental principle that justice is above all and upheld the exercise of power under Section 254(2) of the Act by the Tribunal in recalling its earlier order dated 27 October 2000. Thus recall of an order is not barred on rectification application being made by one of the parties. In these circumstances, the application would be an application for rectification of the order dated 6 December 2007 and would stand governed by Section 254(2) of the Act.

17) In the facts of the present case there can be no denial that the order dated 6 December 2007 suffers from an error apparent from the record. The error is in having ignored the mandate of Rule 24 of the Tribunal Rules which required the Tribunal to dispose of the matter on merits after hearing the respondents. In these circumstances, an application for rectification would lie under Section 254(2) of the Act. The recall of an order would well be a consequence of rectifying an order under Section 254(2) of the Act. In these circumstances, we find no reason to interfere with the order of the Tribunal holding that Miscellaneous Application filed by the appellant is barred by limitation under Section 254(2) of the Act as it was filed beyond a period of four years from the order sought to be rectified.

18) Before concluding, we would like to make it clear that an order passed in breach of Rule 24 of the Tribunal Rules, is an irregular order and not a void order. However, even if it is assumed that the order in breach of Rule 24 of the Tribunal Rules is an void order, yet the same would continue to be binding till it is set aside by a competent Tribunal. In fact, the Apex Court in the Sultan Sadik v/s. Sanjay Raj Subba reported in 2004(2) SCC 277 has observed as under:-

> *" Patent and latent invalidity*
> *In a well-known passage Lord Radcliffe said :*
>
> *" An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."*
>
> *This must be equally true even where the brand of invalidity is plainly visible, for there also the order can effectively be resisted in law only by obtaining a decision of Court."*

Further the Supreme Court in Sneh Gupta v/s. Dev Sarup (2009) 6 SCC 194 has observed

> *" We are concerned herein with the question of limitation. The compromise decree, as indicated herein before, even if void was required to be set aside. A consent decree as is well known, is as good as a contested decree. Such a decree must be set aside if it has been passed in violation of law. For the said purpose, the provisions contained in Limitation Act 1963 would be applicable. It is not the law that where the decree is void, no period of limitation shall be attracted at all."*

Therefore, in this case also the period of four years from the date of order sought to be rectified/recalled will apply as provided in Section 254(2) of the Act. This is so even if it is assumed that the order dated 6 December 2006 is a void order.

19) We shall now answer the questions arising in this case as raised by us in Paragraph 4 above as under:-

Question(a): No. The Tribunal has no power in terms of Rule 24 of the Tribunal Rules to dismiss an appeal before it for non prosecution.

Question(b): The Miscellaneous application for recall of an order falls under Section 254(2) of the Act and not under Section 254(1) of the Act.

Question(c): Does not arise in view of our response to query (b) above.

20) In view of the reasons given herein above, we find the Tribunal was correct in dismissing the Miscellaneous Application by its order dated 10 April 2013 as being beyond the period of four years as provided under Section 254(2) of the Act.

21) Accordingly, the petition is dismissed with no order as to costs.

CHIEF JUSTICE

M.S. SANKLECHA, J.