IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 64 OF 2014

COMMISSIONER OF INCOME TAX., ... Appellant

Versus

M/S. BORKAR PACKAGING PVT. LTD., ... Respondent

Ms. Asha A. Desai, Advocate for the Appellant.

Mr. S. R. Rivankar, Advocate for the Respondents.

Coram:- F. M. REIS &
K. L. WADANE, JJ.

Date:- 13th January, 2015

ORAL ORDER

Heard Ms. Asha Desai, learned Counsel appearing for the Appellant and Shri Rivankar, learned Counsel appearing for the Respondent.

2. We have heard extensively the learned Counsel appearing for the Appellant and the Respondent.

3. The main contention of Ms. Asha Desai, learned Counsel appearing for the appellant, is that the returns which were filed by the Assessee-Respondent herein were not within the time prescribed under Section 139(1) of the Income Tax Act, 1961, as though such returns had to be filed on or before 30.10.2007, the Respondent filed such returns electronically on 30.10.2007 but, however, the ITR – V form was sent by the

Respondent by ordinary post was received by the Appellant only on 18.01.2008. The learned Counsel further points out that as such the returns which were filed electronically, cannot be treated filing of the returns within time prescribed and, as such, the Respondents were not entitled for the benefits in terms of Section 80(1)C of the Income Tax Act, 1961. Learned Counsel further pointed out that in order that the Assessee-Respondent can be entitled to claim such deductions, the returns have to be filed within the time stipulated under Section 139(1) of the Income Tax Act, 1961. Learned Counsel has thereafter taken us through the impugned Order passed by the Income Tax Appellate Tribunal and pointed out that the Judgment of this Court relied upon therein is not applicable to the facts of the present case. Learned Counsel as such submits that there are substantial questions of law which arise in the present Appeal for consideration of this Court.

4. On the other hand, Shri S. R. Rivankar, learned Counsel appearing for the Respondent, has pointed out that the fact finding authorities below have come to the conclusion that the electronically generated returns were in fact filed by the Respondent-Assessee on 30.10.2007. The learned Counsel further submits that the time prescribed for filing such returns in terms of Section 139(1) of the Income Tax Act, 1961, is 30.10.2007 and, as such, according to him, the Assessee has duly complied with the filing of returns within the time prescribed. Learned Counsel further pointed out that there was congestion in the electronic system and, as such,

there was a delay in submitting the ITR-V form to the Appellants which ultimately was sent by the Respondents in January, 2008. Learned Counsel further pointed out that the contention of the learned Counsel appearing for the Appellant that the returns have not been filed within the time prescribed under Section 139(1), cannot be accepted as, according to him, in case of any defect in such returns, it was incumbent upon the Appellants to exercise the procedure under Section 139(9) of the Income Tax Act and call upon the Assessee-Respondent to rectify such defects. Learned Counsel further pointed out that the very fact that the Appellants did not find any defect would itself suggest that the returns filed electronically were within the time prescribed in terms of the provisions of Section 139(1) of the Income Tax Act. Learned Counsel as such submits that in view of the findings of fact arrived at by the authorities below, the question of any interference in the impugned Order under Section 260-A of the Income Tax Act would not arise. Learned Counsel further pointed out that the Board circular no. 5/2007 is not applicable to the facts of the present case as, according to him, such circular in any event cannot override the provisions of the Income Tax Act. Learned Counsel as such submits that the Appeal be rejected.

5. We have duly examined the contention of the learned Counsel and we have also gone through the records. The fact that the returns electronically generated by the Assessee were in fact filed on 30.10.2007 has not been disputed and in case such returns are accepted, the provisions

of Section 139(1) of the Income Tax Act, 1961, are satisfied. The only aspect which is disputed by the learned Counsel appearing for the Appellant is that as the ITR V form was not submitted within a period of 15 days from such returns, filed by the Respondent cannot be treated to be filed in terms of the provisions of Section 139(1) of the Income Tax Act, 1961.

6. The Division Bench of this Court in the Judgment reported in ***(2011) 16 Taxmann 323 (Bom)*** in the case of ***M/s. Crawford Bayley & Co. vs. Union of India***, has observed at paras 7 and 8 thus :

> "7. Treating a return filed by the assessee as an invalid return has serious consequences, Parliament has in sub-section (9) of Section 139 made adequate provisions for the Assessing Officer to furnish in the first instance a period of fifteen days to rectify a defect in the return. A provision has been made for extension of the period within which the defects have to be rectified. Thereafter under the provision it is stipulated that where an assessee rectifies a defect even after the expiry of fifteen days of the further period allowed, but before an assessment is made, the Assessing Officer may condone the delay and treat the return as a valid return. These are powers which are vested in the Assessing Officer.
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> 8. Though the Income Tax Department made a provision for electronic filing of returns, it

appears that the ITR – V Form containing the due verification of the return of the assessee was required to be remitted only by ordinary post. The instructions which were furnished to assessees, a copy of which has been placed on record, specifically stipulate that the ITR – V form should not be sent either by registered post or by speed post or courier. The assessee has furnished adequate material before the Court in support of its contention that having filed the return electronically, it had also submitted the ITR – V form by ordinary post. The assessee has done so on 5 April 2010, 18 May 2010 and 18 November 2010. In that view of the matter, we are of the view that the communication issued by the Income Tax Department on 21 March 2011 is thoroughly misconceived. The order of assessment for assessment year 2009-10, the Court is informed by the learned Counsel for he assessee, has still not been passed. Hence, the provisions of Section 139(9) can be fulfilled by permitting the assessee to file a verification of the return before the Assessing Officer within a period of one week from today. Learned Counsel appearing on behalf of the Petitioner states that this would be done without any delay and in any event within a week. In that view of the matter and with the aforesaid direction, we quash and set aside the impugned Order dated 21 March 2011."

7. The Division Bench has taken note of the fact that not filing the returns within the time prescribed would result in serious consequences and, as such, merely because the ITV - V form was not sent within the period of 15 days, would not by itself deny a right of the assessee to claim that the returns have been filed within the time prescribed. The Division Bench has also taken note of the provisions of Section 139(9) of the Income Tax Act, 1961 and found that the question of holding that there was delay in filing the returns merely because the ITR - V form was not submitted by the Assessee is not at all justifiable. The Income Tax Appellate Tribunal whilst passing the impugned Order dated 04.04.2014 has relied upon the said observations of this Court whilst allowing the Appeal filed by the Respondents. We find no infirmity in the findings of the Income Tax Appellate Tribunal in relying upon the said Judgment.

8. In such circumstances, there are no substantial questions of law which arise in the present Appeal for consideration by this Court under Section 260-A of the Income Tax Act, 1961.

9. In view of the above, we find no merit in the above Appeal which stands accordingly rejected.

K. L. WADANE, J. **F. M. REIS, J.**

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