IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MS.JUSTICE K.B.K.VASUKI

T.C. (A) Nos.84 to 89 of 2015

The Commissioner of Income Tax,
Central Circle III (4)
Chennai. ... Appellant in all Appeals

Vs

Shri S.Duraipandi & S.Thalavaipandian (AOP)
C/o.CNGSN & Associates,
Swathi Court, Flat C & D
No.22, Vijayaraghava Road,
T.Nagar, Chennai- 600 017. ... Respondent in all Appeals

Prayer:- These Tax Case (Appeals) are filed, against the order of the Income Tax Appellate Tribunal, Madras "C" Bench, Chennai dated 08.04.2014 in ITA Nos.2062/Mds/2013, 2063/Mds/2013, 2064/Mds/2013, 2065/Mds/2013, 2066/Mds/2013 and 2067/Mds/2013 respectively preferred against the common order of the Commissioner of Income Tax (Appeals)(c)ii Chennai dt.29.8.13 for the Assessment Years 2002-03, 2003-04, 2004-05, 2005-06, 2006-07 and 2007-08 against the orders dt.20.9.10 by ACIT, Central Circle-III (4) Chennai u/s 251 of Income tax Act 1961 for the Assessment Years 2002-03 to 2007-08.

For Appellant : Mr.T.R.Senthilkumar

COMMON JUDGMENT
(Judgment was delivered by K.B.K.VASUKI, J.)

All these appeals are filed by the Revenue against the order of the Tribunal, thereby condoning the delay of 922 days in filing the appeals by the assessee for the Assessment Years 2002-03, 2003-04, 2004-05, 2005-06, 2006-07 and 2007-08 before the learned Commissioner of Income Tax (Appeals).

2.While the Commissioner of Income Tax (Appeals) dismissed the appeals filed by the assessee before the same, with the delay of 922 days on the ground that the delay was not sufficiently explained, the Tribunal, after having found that the assessee has shown sufficient cause for the delay in filing the appeals, reversed the order of the learned CIT(A) and remitted back the appeals to the learned CIT(A) to decide the appeals of the assessee on merits. The relevant paragraphs of the order of the Tribunal are extracted hereunder:

"7.In the background of above fact, we have to consider the appeals of the assessee. The Hon'ble Supreme court of India has time and again held that acceptance of explanation furnished for condonation of delay should be the rule and refusal an exception more so when no negligence or inaction or want of bonafide can be imputed to the defaulting party. The Hon'ble Supreme Court in the case of Ram Nath Sao v. Gobardhan Sao reported as 2002(3) SCC 195 has held as under:

"Thus it becomes plain that the expression "sufficient cause" within the meaning of Section 5 of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fides is .imputable to a party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependent upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over-jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bona fides can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine-like manner. However, by taking a pedantic and hypertechnical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates, either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way."

The Hon'ble Supreme Court of India while giving liberal construction to the term 'sufficient cause' in the case of Collector Land Acquisition v. Mst.Katiji and others reported as 167 ITR 471 (SC) has held:

"Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 may be admitted after the prescribed period if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal."

8.In view of the facts and circumstances of the present case and the law laid down by the Hon'ble Apex Court, we are of the considered opinion that the appeals of the assessee deserve to be allowed. The assessee has been able to show sufficient cause for delay in filing of appeals before the CIT (Appeals). The matter is remitted back to the CIT (Appeals) to decide the appeals of the assessee on merits. The CIT (Appeals) while adjudicating the appeals on merits shall also take into consideration the effect of the decision of the Tribunal in assessee's appeals in ITA Nos.2223 to 2229/Mds/2012 for Ays 2002-03 to 2008-09 decided on 20-03-2013."

3.The reading of the order of the Tribunal would reveal that the Tribunal has gone in depth into the various proceedings that had been undertaken by the assessee before approaching the Commissioner of Income Tax (Appeals) for pursuing the appeals and the delay is not on account of the inaction on part of the assessee, but on account of availing remedies before various forums including before the Tribunal, the details of which have already been set out in the order of the Tribunal. Since the assessee has not chosen to pursue two parallel proceedings, the delay in filing the appeals has apparently occurred.

4.In view of such matter, we find no error or infirmity in the order so passed by the Tribunal, warranting interference by this Court.

5.Hence, all the Tax Case Appeals are dismissed. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To
1.The Income Tax Appellate Tribunal,
"C" Bench, Chennai.

2.The Commissioner of Income Tax (A)C-II,
A6 (Old No.108) M.G.Road, Chennai.

3.The Asst.Commissioner of Income Tax,
Central Circle III (4)
Room No.325, III Floor,
46/108 M.G.Road, Chennai.

4.The Assistant Registrar,
Income Tax Appellate Tribunal,
Rajaji Bhavan, IV Floor,
Besant Nagar, Chennai.

+1 cc to Mr.T.R.Senthilkumar, SSC, SR.27533.

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