HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No.18631 of 2015

ORDER : (*Per Hon'ble Sri Justice Ramesh Ranganathan*)

Heard Sri C.V. Narasimham, learned counsel for the petitioner, and Sri J.V. Prasad, learned Senior Standing Counsel for the Income Tax Department and, with their consent, the writ petition is disposed of at the stage of admission. This writ petition is filed questioning the validity of the order dated 27.03.2015, passed by the 2nd respondent under Section 264 of the Income Tax Act, 1961 refusing to condone the delay.

Aggrieved by the order dated 08.08.2012, passed by the 3rd respondent, (a copy of which was received by them on 16.08.2012), the petitioner invoked the jurisdiction of the 2nd respondent under Section 264 of the Income Tax Act, 1961 (for short, 'the Act') by their application dated 28.03.2014 seeking condonation of the delay in filing the petition under Section 264 of the Act.

After submitting the application on 28.03.2014, the petitioner submitted their written submissions on 30.06.2014 enclosing therewith an affidavit filed by the Senior General Manager of the petitioner Company. The 2nd respondent passed an order dated 27.03.2015 rejecting the petitioner's request for condonation of delay. In the order under challenge in this writ petition, the 2nd respondent records that the petition under Section 264 of the Act was filed on

29.03.2014 beyond one year from the date of communication of the order on 16.08.2012; the reasons for the delay, as furnished by the petitioner, was that the letter of the Assistant Commissioner was received by them on 16.08.2012; the said letter was misplaced; the accounts department was under the impression that the same was not received by them, and the letter was traced very recently; the petitioner had not furnished any satisfactory explanation nor had they give detailed cogent reasons indicating that the delay, in filing the petition, was beyond their control or the delay was on account of good and sufficient reason; the assessee was a big industry in the area ably assisted by the Accounts department, Advocates, Chartered Accountants etc; and the delay, in filing the petition belatedly, remained unexplained. Considering these facts, the 2nd respondent dismissed the petition filed by the assessee under Section 264 of the Act.

Sri C.V. Narasimham, learned counsel for the petitioner, would submit that the 2nd respondent did not even consider the submissions made by the petitioner on 30.06.2014 or the affidavit enclosed thereto by the Senior General Manager; the satisfaction recorded by the 2nd respondent is without considering the entire material placed before him; and the order of the 2nd respondent must, therefore, be set aside, and the delay condoned.

On the other hand Sri J.V. Prasad, learned Senior Standing Counsel, would submit that, except for a bare assertion that the order passed by the 3rd respondent had been misplaced, the application does not contain any reasons; and the 2nd respondent had rightly rejected the petition to condone the delay.

Section 264 (3) of the Act stipulates that, in the case of an application for revision under Section 264 by the assessee, the application must be made within one year from the date on which the order in question has been communicated to the assessee or the date on which he otherwise came to know of it, whichever is earlier. The order passed by the 3rd respondent was communicated to the petitioner-assessee on 16.08.2012 and the one year period, stipulated under Section 264 (3) of the Act, expired on 15.08.2013, whereas the application was filed only on 28.03.2014.

The proviso to Section 264 (3) of the Act stipulates that the Commissioner may, if he is satisfied that the assessee was prevented by sufficient cause from making the application within the period stipulated under Section 264 (3), to admit an application made after expiry of that period. Power is conferred on the Commissioner, under the proviso to Section 264 (3) of the Act, to condone the delay in filing the revision petition, after the period of one year stipulated under Section 264 (3), if he is satisfied that the assessee was prevented by sufficient cause from making the application within time.

While the satisfaction, under Section 264 (3) of the Act, is undoubtedly that of the Commissioner, he is required to record his satisfaction only after considering the entire material placed before him. In the present case, while the Commissioner has noted the contents of the application submitted by the petitioner on 28.03.2014, he has failed to consider the subsequent written submissions made by them on 30.06.2014 or the affidavit of the Senior General Manager enclosed thereto. As the Commissioner had arrived at the satisfaction, not to condone the delay, without considering the entire material placed before him, we consider it appropriate to set aside the order dated 27.03.2015, and direct him to pass an order afresh, on the condone delay petition, after taking into consideration the entire material on record including the application dated 28.03.2014, the written submissions made on 30.06.2014, and the affidavit of the Senior General Manager enclosed thereto.

The Writ Petition is disposed of accordingly. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

09.11.2015

v v