THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

And

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

-

I.T.T.A.No.156 of 2015

JUDGMENT: (per Hon'ble Sri Justice Ramesh Ranganathan)

This appeal, under Section 260-A of the Income Tax Act, 1961 (for short "the Act"), is preferred against the order passed by the Income Tax Appellate Tribunal, Hyderabad A-Bench in I.T.A.No.1144/Hyd/2009 dated 31.03.2011 for the assessment year 1999-00.

The appellant herein used to carry on business in chit funds. They filed their return of income for the assessment year 1999-00 declaring a total income of Rs.1,16,00,838/-. The Assessing Officer completed the assessment after scrutiny under Section 143(2) of the Act and disallowed Rs.44,02,752/- collected by the appellant towards surety charges, verification charges, miscellaneous charges etc. from the chit bidders as shown in the balance sheet.

The Government of Andhra Pradesh had issued a G.O. on 04.06.1992 forbidding the chit fund companies to make any collection other than chit commission. The chit fund companies, including the appellant, questioned the G.O. before the High Court which, by its order dated 02.06.1993, stayed the operation of the G.O. Sri K.Vasant Kumar, learned counsel for the appellant, would fairly state that the said writ petition was dismissed subsequently in the year 2000.

While matters stood thus, the Assessing Officer treated these receipts as income rejecting the submission of the appellant that there was no accrual of income in the form of receipts even though collection was made to protect business interests. An order of assessment was passed on 08.03.2002. The appellant did not prefer an appeal thereagainst immediately. For the subsequent year 2001-02, an assessment order was passed on 31.03.2003 which was carried in appeal before the Commissioner of Income Tax (Appeals). By his order dated 10.03.2004, the Commissioner of Income Tax (Appeals) allowed the said appeal of the assessee.

Though the limitation for preferring an appeal against the order of assessment was 60 days, which expired in the year 2002 itself, the appellant did not prefer an appeal, against the assessment order for the assessment year 1999-00 even after the appeal, filed by them for the assessment year 2001-02, was allowed by the Commissioner of Income Tax (Appeals) on 10.03.2004. It was more than four years thereafter on 22.03.2008 that an appeal was preferred to the Commissioner of Income Tax (Appeals) against the assessment order for the year 1999-00. The Commissioner of Income Tax (Appeals) dismissed the said appeal as time barred.

Aggrieved thereby, the appellant herein carried the matter in appeal to the Income Tax Appellate Tribunal. In the order under appeal, the Tribunal held that the appeal preferred by the appellant, to the Commissioner of Income Tax (Appeals), was belated and was filed with a delay of 6 years 3 months and 6 days; the Commissioner of Income Tax (Appeals) did not condone the delay and had dismissed the appeal as time barred; the appeal was not filed by the assessee within time; the judgment of the Delhi High Court in ***Surender Kumar Boveja vs. CWT*** squarely applied to the facts of the case; even if the explanation of the assessee that they did not prefer an appeal till the delay for the subsequent assessment year 2001-02 was allowed by the Commissioner of Income Tax (Appeals) on 10.03.2004 were to be accepted, the reasons given by the assessee would, at best, justify the delay up to the point when the appeal for the later assessment year was disposed of; once the assessee had decided to contest a particular issue in appeal, the delay in filing the appeal, for the assessment year in question, should be explained; there were no genuine and *bona fide* reasons for the delay in filing the appeal, that too after 6 years 3 months and 6 days; there were no circumstances at all, before expiry of the limitation prescribed, which prevented the assessee from filing the present appeal before the Commissioner of Income Tax (Appeals); and keeping in view all the facts, they did not see any infirmity in the order of the Commissioner of Income Tax (Appeals) in not condoning the delay of a long period of 6 years 3 months and 6 days.

As noted hereinabove, the limitation for preferring an appeal, against an order of assessment, is 60 days from the date of its receipt. The 60 days period expired in the year 2002, whereas an appeal was preferred to the Commissioner of Income Tax (Appeals) only on 22.08.2008 i.e more than 6 years 3 months thereafter.

The only contention urged by Sri K.Vasant Kumar, learned counsel for the appellant, is that it was on wrong legal advice that the appellant had failed to prefer an appeal against the order of assessment for the year 1999-00; it is only after the order of the

Commissioner of Income Tax (Appeals), for the assessment year 2001-02, was confirmed by the Income Tax Appellate Tribunal, and the appeal preferred by the Revenue was dismissed, that they realized their mistake in not preferring the appeal for the assessment year 1999-00; and, as no litigant can be made to suffer for the fault of the counsel, the delay ought to have been condoned.

Condonation of delay is in the discretion of the authorities concerned. The delay, in the present case, is inordinate and is in excess of 6 years 3 months. There is no material on record to show that, for the alleged failure of the counsel, any action was taken by the appellant against him. The discretion exercised both by the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal, in refusing to condone the inordinate delay of more than 6 years, does not give rise to a substantial question of law necessitating interference in this appeal.

The appeal fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

05th November 2015.

JSU

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

And

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

–

–

–

–

–

–

–

–

–

–

–

–

–

–

I.T.T.A.No.156 of 2015

–

–

–

Date: 05.11.2015

JSU