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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA 453/2012

CIT

..... Appellant

Through: Mr. Rohit Madan, Senior Standing
counsel with Mr. Zoheb Hossain and Mr. Akash
Vajpai, Advocates.

versus

ARVINDER SINGH

..... Respondent

Through: Mr. Manoj V. George and Ms. Shilpa M.
George, Advocates.

AND

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ITA 464/2012

CIT

..... Appellant

Through: Mr. Rohit Madan, Senior Standing
counsel with Mr. Zoheb Hossain and Mr. Akash
Vajpai, Advocates.

versus

ELEGANT TRAVELS PVT LTD.

..... Respondent

Through: Mr. Manoj V. George and Ms. Shilpa M.
George, Advocates.

CORAM:

HON'BLE DR. JUSTICE S. MURALIDHAR

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

24.08.2015

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CM No. 13614/2010 (for condonation of delay in filing the appeal) & CM No. 13616/2012 (for condonation of delay in re-filing the appeal) in ITA No. 453/2012

CM No. 14085/2012 (for condonation of delay in filing the appeal) in ITA No. 464/2012

1. These are three applications seeking condonation of the delay in filing and re-filing two appeals filed by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act') challenging the common impugned order dated 5th April 2007 passed by the Income Tax Appellate Tribunal ('ITAT') in I.T(SS).A.No.352/Del/1997 and I.T(SS).A.No.104/Del/1997 relating to the block period 1st April 1986 to 6th November 1996.

2. The background facts are that Elegant Travels Private Limited ('ETPL') was incorporated on 17th January 1987. It had three Directors of which one was Mr. Arvinder Singh, the Respondent in ITA No. 453/2012. It is stated that ETPL is engaged in the business of travel agents, tour operators and ticketing etc. and had the agency of Indian Airlines and Vayudoot. The ticketing business is stated to have been closed in 1990 consequent upon a change in the policy.

3. Search and seizure operations were carried out under Section 132 of the Act on Mr. Buta Singh, the father of Mr. Arvinder Singh, and Group. Notice was issued under Section 158BD of the Act requiring ETPL as well as Mr. Arvinder Singh to file their respective returns of income. Another similar notice was issued under Section 142(1) of the Act. After the Assessee filed

their written submissions, fresh notices were issued to them under Section 143(2) of the Act.

4. As far as Mr. Arvinder Singh was concerned, the Assessing Officer ('AO') completed the assessment under Section 158BC read with Section 113 of the Act on 28th November 1997 and computed the undisclosed income as Rs.1,33,08,737. Aggrieved by the above order, Mr. Arvinder Singh filed an appeal before the ITAT. By the impugned order dated 5th April 2007, the ITAT held that no valid opportunity was granted to the Assessee before making the impugned order of assessment and further that the requisite satisfaction was not recorded by the AO before initiating proceedings under Section 158BD of the Act. The ITAT, therefore, declined to examine the merits.

5. As far as ETPL was concerned, by assessment order dated 30th September 1998 the AO completed the assessment and computed the total income of the Assessee as Rs.34,95,760. ETPL also filed an appeal before the ITAT. By the same impugned order dated 5th April 2007, the appeal filed by the ETPL was allowed by the ITAT by setting aside the impugned assessment order on the ground of failure to provide an opportunity to the Assessee and to record satisfaction before initiating proceedings under Section 158BD of the Act.

6. The present two appeals were filed on different dates. While ITA No. 453/2012 appears to have been filed in the first instance on 18th December 2010, ITA No. 464/2012 appears to have been filed on 14th August 2012.

7. Initially in the application CM No. 13614/2010 seeking condonation of delay in filing ITA NO. 453/2012 (CIT v. Arvinder Singh) it was claimed that there was only 22 days' delay in filing the appeal. It was stated in the said application that initially no appeal was preferred against the impugned order dated 5th April 2007 of the ITAT as at that stage “it was considered more appropriate to reframe the assessment.”

8. CM No. 13616/2012 came to be filed in ITA No. 453/2012 seeking to explain the extraordinary delay of 429 days in re-filing the appeal. In this application it is claimed that a copy of the impugned order dated 5th April 2007 of the ITAT was received in the office of the Appellant only on 29th July 2010. The appeal was required to be filed on or before 28th November 2010 but was filed on 18th December 2010. Consequently, it was asserted that there was only a delay of 22 days. As far as the delay in re-filing was concerned, it was explained that on account of the resignation of the Standing Counsel of the Income Tax Department who had filed the matter in December 2010, the defects pointed out by the Registry could not be attended to. It was only when the appeal of ETPL against the subsequent order of the ITAT dated 16th December 2009 was filed, it was noticed that ITA No. 453/2012 was unattended and it was only thereafter that the objections were removed and the appeal was re-filed.

9. The explanation offered for the delay in filing ITA No. 464/2012, in which ETPL was the Respondent, requires to now be noticed. The explanation offered in CM No. 14085/2012 (in ITA No. 464/2012) is that

pursuant to the order dated 5th April 2007 of the ITAT setting aside the assessment order, the AO issued a fresh notice under Section 143(2) of the Act and thereafter framed a fresh assessment on 31st December 2008. Against this assessment order, appeals were filed before the ITAT. By order dated 16th October 2009, the ITAT quashed the assessment on the ground that when in the first round the ITAT had set aside the assessment by its order dated 5th April 2007, no directions had been given to the AO to pass a fresh order. The Revenue appealed against the said order dated 16th October 2009 of the ITAT to this Court by way of ITA No. 2018/2010. It is stated that when ITA No. 2018/2010 was listed before the Court some time in 2010, the Revenue sought leave to file an appeal against the ITAT's first order dated 5th April 2007. Thereafter, the Standing counsel for the Revenue immediately wrote to the Department informing it of the necessity to file an appeal against the impugned order dated 5th April 2007 of the ITAT. No dates are mentioned in relation to any of the aforementioned events. It is simply stated that the said documents were then made available to the Standing counsel on 10th August 2012 and thereafter the present appeal was drafted. The appeal was filed on 14th August 2012 with a delay of 626 days.

10. In CM No. 14085/2012 it is also stated that the impugned order of the ITAT dated 5th April 2007 was received in the office of the Appellant only on 29th July 2010.

11. The Court notices that the above assertion, both in CM No. 13616/2012 came to be filed in ITA No. 453/2012 and in CM No. 14085/2012 in ITA No. 464 of 2012 that the order of the ITAT dated 5th April 2007 was

received only on 29th July 2010, i.e. after three years and seven months, does not appear to be correct or convincing. The reason is this.

12. The Court had by an order dated 31st July 2014 granted the Appellant time to file an additional affidavit explaining “sufficient cause and reasons for the delay in filing the appeal against the order dated 5th April 2007.” In the same order the Court observed “it is the duty of the Appellant to bring on record true and correct facts and justify why and for what reason no appeal was initially preferred against the order dated 5th April 2007; whether the order was accepted by the Revenue at that stage; why the decision was accepted and fresh block assessment order was passed.” Opportunity was also given to the Respondent to file reply to the said affidavit.

13. Pursuant to the above order the Appellant filed an additional affidavit on 22nd September 2014. Interestingly, in this additional affidavit (which is actually a submission supported by an affidavit) it is stated *inter alia* that when ITA No. 2018/2010 (being the appeal of the Revenue against the ITAT's order dated 16th October 2009) was listed for hearing on 28th January 2011 an order was passed by the Court noting the contention of the counsel for the Revenue that there was no impediment for the AO to have passed a fresh assessment order. On that basis, notice was issued in the said appeal. It was stated in the additional affidavit in para 12 as under:

"12. During the course of proceedings in the aforementioned case, it was pointed out by the Counsel for the Revenue to the Department on 28.01.2011, that the Department is under a mistaken belief that ITAT vide order dated 05.04.2007 has remanded the matter to the AO to reframe the assessment

after allowing opportunity of being heard to the Assessee. This mistaken belief was particularly for the reason that it was the contention of the Assessee before the ITAT that Assessing officer while passing AO violated the principles of natural justice by not providing an opportunity of being heard to the Assessee. The said mistaken belief is also reflected in the CSR recorded by the Department dated 08.02.2010. Copy of the CSR dated 08.02.2010 is attached herewith as ANNEXURE C."

14. It was further stated in para 13 that "on the basis of the aforementioned advise of the Counsel for the Revenue, the case file along with complete record was handed over to the counsel on 10.08.2012 and appeal before the Hon'ble High Court was filed On 14.08.2012."

15. Nowhere in the additional affidavit is any explanation offered for the extraordinary delay between 28th January 2011, when counsel for the Revenue is supposed to have advised the Department that an appeal should be filed against the impugned order dated 5th April 2007, and 10th August 2012, when papers were actually entrusted to counsel for the Revenue for filing such an appeal. In other words, for a delay of one year and seven months there is no explanation whatsoever.

16. Thereafter in para 14 it is stated that "in the present case the certified copy of the AO dated 5th April 2007 was received by Department/Revenue on 26th June 2007." Clearly, therefore, the earlier submissions made to the effect that the impugned order dated 5th April 2007 was received only on 29th July 2010 was incorrect. Even otherwise it seems extremely unlikely that it would take the Department over three years and three months to

receive a copy of an order of the ITAT in the Department. The very fact that a fresh notice was issued by the AO under Section 143(2) of the Act way back on 1st October 2008 obviously meant that a copy of the order dated 5th April 2007 of the ITAT was received prior to that date. Therefore, for the purposes of these appeals the Court will proceed on the basis of the statement made by the Revenue itself in para 14 of the additional affidavit that it had received a copy of the order dated 5th April 2007 on 26th July 2007 itself.

17. Consequently, for computing the delay in filing the present appeals, the limitation should be reckoned from 26th June 2007, as rightly pointed out by the Respondent in its reply to the additional affidavit. The Revenue has a limitation period of 120 days i.e. 4 months to file an appeal under Section 260A of the Act. Therefore, the last date for filing the appeals was 26th October 2007. Keeping that view if the actual dates for filing of the two appeals are taken into consideration then the actual delay works out to far more than what is claimed by the Revenue. As far as ITA No. 453 of 2012 is concerned, the date of filing was 18th December 2010 and the delay works out to 3 years, 5 months and 22 days, i.e. 1271 days. As far as ITA No. 464 of 2012 is concerned, the actual date of filing was 14th August 2012 and the delay works out to 5 years, 1 month and 19 days, i.e. 1876 days.

18. That the Revenue itself is confused about the exact days of delay is apparent from the additional affidavit filed by it in ITA No. 464/2012 where it has computed the delay in filing the said appeal as 565 days.

19. The purpose of the Court passing the order dated 31st July 2014 requiring a proper affidavit to be filed by the Revenue was to give it one more opportunity of giving a satisfactory explanation for the extraordinary delay in filing the appeals. Unfortunately, even by way of the additional affidavit dated 14th September 2014, the Revenue has been unable to offer any convincing explanation.

20. It was urged by Mr. Rohit Madan, learned Senior Standing counsel for the Revenue, that it was only on account of confusion in the Department on whether the impugned order dated 5th April 2007 of the ITAT could be challenged that there was an extraordinary delay in filing the appeals. As already noticed from the additional affidavit filed by the Revenue on 22nd September 2014, the Department was informed by counsel way back on 28th January 2011 that it ought to file appeal against the ITAT's order dated 5th April 2007. Therefore after 28th January 2011, the Department could not claim to be still under any confusion as to the course of action it was expected to take. It is plain that it did not take any urgent action as far as filing ITA No. 464/2012 was concerned till 14th August 2012.

21. As far as ITA No. 453/2012 is concerned although it was directed against the same impugned order dated 5th April 2007 of the ITAT, there appears to have been no confusion on the necessity for filing such an appeal. The reason given in CM No. 13614/2012 for the delay is again totally unconvincing. The appeal appears to have been prompted by the ITAT quashing the reassessment order by the order dated 16th October 2009. Nevertheless, even if one takes the said order of the ITAT as the trigger, the

appeal was filed only on 18th December 2010 i.e. more than an year and two months thereafter. Therefore even that delay is not satisfactorily explained.

22. In *Postmaster General v. Living Media India Ltd. (2012) 3 SCC 563*, the Supreme Court has deprecated the casual attitude of government departments in taking steps to file appeals within reasonable time in the following words:

"26. In spite of affording another opportunity to file better affidavit by placing adequate material, neither the Department nor the person in-charge has filed any explanation for not applying the certified copy within the prescribed period. The other dates mentioned in the affidavit which we have already extracted, clearly show that there was delay at every stage and except mentioning the dates of receipt of the file and the decision taken, there is no explanation as to why such delay had occasioned. Though it was stated by the Department that the delay was due to unavoidable circumstances and genuine difficulties, the fact remains that from day one the Department or the person/persons concerned have not evinced diligence in prosecuting the matter to this Court by taking appropriate steps.

27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of *bonafide*, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was *bonafide* effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

23. In *State of Uttar Pradesh v. Amar Nath Yadav (2014) 2 SCC 422* while reiterating the above decision, the Supreme Court declined to condone the delay of 481 days in the State filing a special leave petition against the

judgment of the High Court of Allahabad.

24. Consequently, the Court is not satisfied with the reasons offered for the extraordinary delay of 1271 days in filing ITA No. 453 of 2012 and the delay of 1876 days in filing ITA No. 464 of 2012. Accordingly CM Nos. 13614/2010 in ITA No. 453/2012 and CM No. 14085/2012 in ITA No. 464/2012 are dismissed.

25. The reasons for the delay of 426 days in re-filing ITA No. 453 of 2012 are also wholly unconvincing. CM No. 13616/2012 in ITA No. 453/2012 is also, therefore, dismissed.

26. With the dismissal of the aforementioned applications, the appeals ITA Nos. 453 and 464 of 2012 are also dismissed.

S. MURALIDHAR, J

VIBHU BAKHRU, J

AUGUST 24, 2015
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