IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 05.08.2014

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE G.M.AKBAR ALI

T.C.A. NOS. 838 & 839 OF 2014

G.Vanitha .. Appellant in TC (A) No.838/13
G.Saravanan .. Appellant in TC (A) No.839/13/
Appellants in both appeal

- Vs -

The Asst. Commissioner of Income Tax
Central Circle II (1)
Chennai 600 034. .. Respondent in both appeals/
Respondents in both appeal

Tax Appeals u/s 260-A of the Income Tax Act filed against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, dated 30.09.2013 in IT (SS) A Nos.02 and 03/Mds/2013 for the block period from 1991-1992 to 2000-2001 and 1.4.2000 to 6.12.2000 against the order of the Commissioner of Income Tax, Appeals-I, Chennai dated 24.1.2013 made in I.T.A.No.143/2012-13 against the order of the Deputy commissioner of Income Tax central Circle II(1) Chennai-34 dated 28.1.05 and made in P.A.No./C1R No.702-V/AAHPU 3819 and Assessment year 91-92 to 2000 - 2001 and 1.4.2000 to 6.12.2000 in TC.No.838/2013 and against the order of this Commissioner of Income Tax (Appeals)-1, Chennai-34 dated 24.1.2013 made in I.T.A.No.126/2012-13 and PAN ABGPS 8826B against the order of this Deputy Commissioner of Income - Tax Central Circle II (1) Chennai 600 034 dated 30.7.2004 and made in PANO/GIR NO.730S/ABGPS 8826B and Assessment year 91-92 to 2000-01 and 1.4.2000 to 6.12.2000 is TC No.839/2013.

For Appellants : Mr. Mr. S.Sridhar

For Respondent : Mr. Swaminathan

COMMON JUDGMENT
(DELIVERED BY G.M.AKBAR ALI, J.)

These tax appeals are preferred against the order dated 30.9.13, passed by the Income Tax Appellate Tribunal, Madras 'D' Bench, in IT (SS) A Nos.02 and 03/Mds/2013 for the block period from 1991-1992 to 2000-2001 and 1.4.2000 to 6.12.2000.

2. Even at the very outset, we find that the plea of the counsel for the appellants seeking sympathetic consideration for condonation of delay does not deserve even an iota of sympathy, not only on account of the delay, but also on account of the conduct of the assessee in filing improper papers, both before the Tribunal as well as before this Court.

3. Apart from the above stated position with regard to the filing of the case, on the merits of the case, the brief facts necessary for the disposal of these appeals are as under :-

The assessees were carrying on business under the name and style of 'Murugan Videos' and 'Saravana Video Centre' respectively. The respondents initiated action under Section 130 of the Income Tax Act and block assessment was completed under Section 143 of the Act and the assesement was completed as early as on 30.7.04. Penalty proceedings under Section 158 BFA of the Income Tax Act were initiated vide notice dated 30.7.04 and the Assessing Officer, levied a penalty of Rs.20,45,670/= (Rupees Twenty Lakhs Forty Five Thousand Six Hundred Seventy only) and Rs.20,33,357/= (Rupees Twenty Lakhs Thirty Three Thousand Three Hundred and Fifty Seven only) against which appeals were preferred by the appellants before the Commissioner of Income Tax (Appeals) (for short 'CIT (A)'). The said appeals were preferred only in October, 2010 after a long delay. It is the case of the assessee that penalty proceedings dated 28.1.05 was received by the assessee and handed over to their chartered accountant, who prepared the appeal on 13.2.05, but the appeal was not filed and the penalty proceedings orders were misplaced. According to the assessee, they received demand notices dated 16.2.10 and, thereafter, appeal was initiated on 28.10.10. The CIT (A) considered the appeals, but not satisfied with the reasons adduced for such delay, dismissed the appeals against which appeals were preferred before the Appellate Tribunal by the assessee.

4. Even before the Tribunal, the assessee's case was that only after receiving the demand notices, the appeals were initiated on 11.11.10. According to the assessees, they cannot be penalised for the error committed by their chartered accountants and their knowledge was only in October, 2010 and, thereafter, steps were taken to file the appeals. However, the Tribunal found the assessees have not even filed an affidavit of their chartered accountant for misplacement of the penalty orders and the decisions relied on by the assessees are not applicable to the case on hand and, therefore, dismissed the appeals, against which the present appeals have been filed.

5. On notice, Mr.Swaminathan, learned senior standing counsel appears on behalf of the Revenue. Heard Mr.Sridhar, learned counsel appearing for the appellants and Mr.Swaminathan, learned senior standing counsel appearing for the Revenue.

6. Learned counsel appearing for the appellants submitted that the case of the assessees has to be viewed sympathetically as it is an individual case and the penalty is more than Rs.20 lakhs in each case. Learned counsel for the appellants further pointed out that because of the fault of the chartered accountant, the individual assessee should not be penalised. To drive home the said point, learned counsel for the appellants relied upon the decisions in167 ITR 471 (SC), (2009) 316 ITR 197, (2006) 280 ITR 357 (Mad) and (2010) 327 ITR 139 (Mad).

7. Per contra, learned sen ior standing counsel for the Revenue drawing the attention of this Court to pages - 12 and 13 of the typed set of the assessee, wherein the grounds of appeal dated 13.2.05 and 25.5.05 respectively, pointed out that the said grounds of appeal was not found to be the grounds of appeal preferred before the CIT (A). According to the Revenue, one of the ground raised is that the assessees received the intimation only in October, 2010 and, thereafter, they preferred the appeal, whereas the assessees at the same time would admit that penalty proceedings order was passed on 28.1.05 and the same was received by the assessees and handed over to their chartered accountant as early as in the year 2005 and though appeal grounds were prepared, but the same was not filed for the reason that the penalty proceeding orders were misplaced by the chartered accountant.

8. This Court, on a consideration of the materials placed before it and also on appreciation of the arguments advanced on either side is of the considered view that the case of the appellants has to necessarily fail. As already pointed out by the Tribunal as well as the CIT (A), the assessees were not vigilant and they slept over the matter for more than five years and they have not even cared to file proper documents either before the CIT (A) or before the Tribunal or even before this Court. Neither the affidavit of the chartered accountant nor a letter from the chartered accountant has been filed either before the CIT (A) or before the Tribunal to explain the delay. However, the assessees rely on a demand letter dated 16.2.10 and their reply dated 9.3.10 for furnishing a copy of the penalty proceedings. Neither the letter dated 16.2.10 nor the reply dated 9.3.10 finds any place before the lower authorities and even before this Court, the same do not form part of the typed set of papers. However, at the time of hearing only, a copy of the letter dated 9.3.10 alone is produced, whereas the communication of the department dated 16.2.10 is not produced even before this Court. This Court is of the considered view that the reasons for the delay has not been satisfactorily explained warranting condonation before the original authority, the appellate Tribunal as well as before this Court.

9. Though the learned counsel for the assessees tried his best to convince this Court to look into the matter sympathetically, this Court, while appreciates the endurance of the learned counsel for the assessees, is not inclined to accept such a prayer, since the assessees have slept over the matter for more than five years.

10. For the reasons aforementioned, this Court is of the considered view that there is no questions of law much less substantial questions of law that arise for consideration in these appeals. There being no merits, both the appeals are dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

GLN

To

1. The Asst. Commissioner of Income Tax
Central Circle II (1)
Chennai 600 034.

2. The Commissioner of Income Tax,
Appeals-1, Chennai-34.

3. The Deputy Commissioner of Income Tax Central
Circle II(1) Chennai -34.

4. The Assistant Registrar Income Tax Appellate
Tribunal, Madras 'D' Bench, Besant Nager,
Chennai 600 090.

+ 2 ccs to Mr.S.Sridhar, Advocate SR.35021
+ 2 ccs to Mr.M.Swaminathan, Advocate Sr.34918

T.C.(A) NOS. 838 & 839 OF 2014

BKY(CO)
Eu 22.12.14