IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.2.2016

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

TAX CASE APPEAL NO.1175 OF 2015

M/s.Caterpillar India Pvt. Ltd.
(in the matter of erstwhile
Caterpillar Commercial Pvt.Ltd.
since merged with M/s.Caterpillar
India Pvt.Ltd.), Chennai-113. ...Appellant

Vs

The Deputy Commissioner of Income
Tax, Large Tax Payer Unit, Chennai. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 19.6.2015 made in ITA.No.1722/Mds/2012 on the file of the Income Tax Appellate Tribunal 'C' Bench, Chennai against the order of the Commissioner of Income Tax(A)-IV, Chennai-34, dated 30/12/2011 made in ITA No.1722/Mds/2012 which was filed against the order of the Deputy Commissioner of Income Tax, Large Tax Payer unit, Chennai dated 24/12/2010 and made in GIRNO./PAN No.AABCC 2295D.

For Appellant : Mr.Deepak Chopra

For Respondent : Mr.T.Ravikumar

JUDGMENT WAS DELIVERED BY V.RAMASUBRAMANIAN,J

This appeal, filed under Section 260A of the Income Tax Act, 1951, arises out of the dismissal of a petition for condonation of the delay of 175 days in filing a regular appeal before the Income Tax Appellate Tribunal.

2. Heard Mr.Deepak Chopra, learned counsel for the appellant. In view of the limited scope of the appeal, we directed Mr.T.Ravikumar, learned Standing Counsel to take notice for the respondent.

3. The only question of law that arises for consideration in this appeal is as to whether the finding of the Tribunal that there was no sufficient cause for the delay is perverse or not ?

4. In the affidavit filed in support of the petition for condonation of the delay, the appellant had stated that what was in question was the allowability of ESOP expenses. The Commissioner of Income Tax (Appeals) had rejected the claim of the appellant on the ground that there were no supporting documents. Therefore, the appellant made earnest attempts to collect necessary documents under the ESOP Scheme of its transferor company.

5. The appellant is actually a company, which got merged with M/s.Caterpillar India Private Limited. The issue involved in the appeal related to the period prior to merger. Therefore, obviously, there were some difficulties in getting necessary documents from the transferor company.

6. Unfortunately, the Tribunal adopted a pedantic approach in holding the aforesaid reason indicated in paragraphs 5 and 6 of the affidavit in support of the petition for condonation of delay to be not amounting to sufficient cause. It is this approach that has vitiated the order of the Tribunal.

7. However, Mr.T.Ravikumar, learned Standing Counsel for the respondent submitted that the question of condonation of delay in filing the appeal lies within the discretion of the Tribunal and that therefore, the exercise of such a discretion one way or the other cannot give rise to a question of law in terms of Section 260A of the Act. Therefore, in essence, it is contended by the learned Standing Counsel that no question of law arises for consideration in this appeal.

8. But, we do not agree with the contention of the learned Standing Counsel for the Department.

9. As a matter of fact, the condone delay petitions are filed nowadays as a matter of routine and things are normally taken for granted. But, in this case, the appellant had explained that the issue involved in the appeal related to an ESOP Scheme that was in force before the merger of the company. Hence, the difficulty in fetching the documents, for the non production of which, the Commissioner of Income Tax (Appeals) rejected the appeal, is definitely a sufficient cause. The Tribunal ought to have condoned the delay and the findings are certainly perverse.

10. Therefore, the question of law is answered in favour of the appellant/assessee. The tax case appeal is allowed, the order of the Tribunal is set aside and the Tribunal is directed to number the appeal and take it up for disposal on merits. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Income Tax Appellate Tribunal 'C' Bench,
Chennai.

2.The Commissioner of Income Tax(A)-IV,
Chennai-34.

3.The Deputy Commissioner of Income Tax,
Large Tax Payer Unit,
Chennai.

+2 ccs to Mr.Deepak Chopra, Advocate, sr.7801(16.02.2016)
+1cc to Mr.T.Ravikumar, Advocate, S.R.No.7288(13.06.2016)

T.C.A.No.1175 of 2015

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