IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.3.2016

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

TAX CASE APPEAL NOS.107 & 108 OF 2016 AND CMP.NO.1934 OF 2016

Commissioner of Income Tax,
Central-I, Chennai-34. ...Appellant/Respondent

Vs

Shri.K.S.Thirumalaivasan
L/R of T.Gokula Krishna ...Respondent/Appellant

APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 29.7.2015 made in I.T.A.Nos.582 & 583/Mds/2015 on the file of the Income Tax Appellate Tribunal, 'B' Bench, Chennai for the assessment year 2009-10 preferred against the order of The Commissioner of Income Tax (Appeals)-V Chennai dated 26.12.13 in I.T.A No.7/12-13(A.V and I.T.A.No.31/12-13(A)-V preferred against the assessment order of the Assistant commissioner of Income Tax, Business Circle V, Chennai 34 dated 25.6.2012 and 29.12.2011 respectively for the Assessment year 2009-2010.

For Appellant : Mr.T.R.Senthilkumar

COMMON JUDGMENT

(Judgment was delivered by V.RAMASUBRAMANIAN,J)

These two appeals are filed by the Revenue, challenging the order of the Income Tax Appellate Tribunal, condoning the delay in filing the appeals and remitting the matter back to the Assessing Officer.

2. Heard Mr.T.R.Senthilkumar, learned Standing Counsel for the appellant/Revenue.

3. The assessee was the proprietor of a concern engaged in the business of trading and installation of electrical items. He filed a return of income on 3.12.2009 for the assessment year

2009-10. The return was taken up for scrutiny assessment and notices under Section 143(2) and 142(1) were issued to verify the genuineness of sundry creditors and the claim of higher rates of depreciation and to produce relevant documents.

4. The Assessing Officer added an amount of Rs.3.99 crores as additional income, which was offered by the assessee himself to purchase peace. The Assessing Officer also found that an amount of Rs.11,46,457/- towards sales tax payable by the assessee was not paid before the filing of the return of income. Hence, the same was also added.

5. Eventually, by the order of assessment dated 29.12.2011 passed under Section 143(3), a tax demand of more than Rs.2 crores was made. Separate proceedings for imposition of penalty under Section 271(1)(c) were also initiated.

6. The assessee filed an appeal with a delay of 115 days. However, he did not appear before the Commissioner of Income Tax (Appeals). Therefore, the Commissioner of Income Tax (Appeals) passed an ex parte order dated 26.12.2013 confirming the additions.

7. In the meantime, the Assessing Officer also passed an order dated 25.6.2012, levying minimum penalty. Aggrieved by the order of penalty, a fresh appeal was filed before the Commissioner of Income Tax (Appeals). That was also dismissed ex parte on 26.12.2013 along with the other appeal. As against the two orders passed by the Commissioner of Income Tax (Appeals) on 26.12.2013, one on quantum and another on penalty, the assessee filed two appeals with a delay of 392 days before the Tribunal. The Tribunal condoned the delay, allowed the appeals and remitted the matter back to the Assessing Officer on the ground that sufficient opportunity was not given. It is against the said orders that the Department has come up with the above two appeals.

8. The fact remains that the assessee met with an accident on 30.11.2014, suffered a head injury and has become bedridden. This fact is not denied by the Department. This is the reason why the appeals before the Commissioner of Income Tax (Appeals) could not also be prosecuted effectively. All that the Tribunal has done is to take a sympathetic view of the fact that the assessee met with a road traffic accident, suffered a head injury and is bedridden. It is the assessee's own son, who is now prosecuting the appeals. Therefore, we find no substantial question of law to interfere with the orders of the Tribunal.

9. Accordingly, the above tax case appeals are dismissed. Consequently, the above CMP is also dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

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

2.The Commissioner of Income Tax(Appeals)-V,
Chennai.

3.The Assistant commissioner of Income Tax,
Business Circle V,
Chennai-34.

4.The Commissioner of Income Tax,
Central I,
Chennai.

+1cc to M/S.T.R.SenthilKumar, Advocate sr.14384

TCA.Nos.107 & 108 of 2016
and CMP.No.1934 of 2016

rsi(CO)
srg(18/03/2016)