

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2016

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
AND

THE HONOURABLE MR.JUSTICE DR.ANITA SUMANTH

Writ Appeal No.1314 of 2016
and C.M.P.No.17100 of 2016

1. The Central Board of Direct Taxes
rep. by its Deputy Secretary (OT)
Department of Revenue-Ministry of
Finance Government of India, New Delhi.
2. The Commissioner of Income Tax,
Chennai-V, Aaykar Bhavan,
Wanarpathy Block, V Floor,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.
3. The Income Tax Officer,
Company Ward-V(4),
121 Mahatma Gandhi Road
Nungambakkam, Chennai-600 034. ... Appellants/ Respondents

Vs.

M/s. Regen Infrastructure &
Services Pvt. Ltd., (formerly
Renewable Energy Generation Pvt. Ltd.
rep. by its Joint Managing Director,
Mr.R.Sundaresh, Samson Towers,
Floor 4A, No.403L Pantheon Road,
Egmore, Chennai - 600 008. ... Respondent/
Petitioner in Writ petition

Writ Appeal filed under Clause 15 of the Letters Patent
against the order passed by the learned single Judge in Writ
Petition No.5137 of 2015, dated 14.03.2016.

Petition filed under Article 226 of the constitution of
India praying to issue a writ of certiorarified mandamus calling
for records of the first respondent F. No.312/19/2014-OT in dt
5.5.2014 and to quash the same and consequently direct the 1st
respondent to accept the return of income filed by the
petitioner Company for the Assessment Year 2010-11 under u/s 139
(1) of the Act after affording a reasonable opportunity and
personal hearing.

For appellants : Mr.T.Ravikumar, Standing Counsel

JUDGMENT

(Judgment of the Court was delivered by
NOOTY.RAMAMOHANA RAO,J)

This Letters Patent Appeal is directed against the order rendered by the learned Single Judge in W.P.No.5137 of 2015 on 14.03.2016.

2. The Respondent company is the Assessee on the rolls of the Income Tax Officer, Company Ward-V(4), Nungambakkam, Chennai. For the Assessment Year 2010-11, the Respondent/Assessee has uploaded its Return sometime immediately past midnight of 15.10.2010, that was treated as belated filing beyond the permissible time. It is only appropriate to notice that by a Notification dated 28.9.2010, the Ministry of Finance has extended the due date for filing of the Income Tax Returns for the Assessment Year 2010-11, from 30.09.2010 up to 15.10.2010, as general life has been disturbed due to the floods. The Assessee moved an application under Section 119 (2) (b) of the Income Tax Act, before the Central Board of Direct Taxes, seeking condonation of delay of one day in filing the Return of income. That application has been rejected by the Central Board of Direct Taxes, by its order dated 05.05.2014. Calling in question the said order dated 05.05.2014, the Writ Petition referred to supra has been moved.

3. Heard Shri.T.Ravikumar, learned Standing Counsel, for the Department.

4. The only reason assigned by the Central Board of Direct Taxes for rejecting the application seeking condonation of delay is spelt out in paragraph 4 of its order. It is stated that there are no floods in the State of Tamil Nadu and hence the Assessee could have easily filed its Return in the normal period running up to 30.09.2010 or at least any time up to the extended period of 15.10.2010. Since such a Return has not been filed on or before 15.10.2010, the delay cannot be condoned.

5. The learned Single Judge had come to the conclusion that ends of justice would be served better by setting aside the order of the Central Board of Direct Taxes and directing in effect, the Assessing Officer to consider the Return of Income filed by the Assessee for the Assessment Year 2010-11, on merits.

6. It is appropriate to notice that under Section 119 (2) (b) of the Income Tax Act, the Central Board of Direct Taxes has

been empowered "to admit an application or claim for exemption, deduction, refund or any other relief under the Act, after the expiry of the period specified by or under the Act by making such an application or claim and deal with the same on merits in accordance with law." In other words, the statute has conferred discretion in the hands of the Board to admit of any claim which is made beyond the period specified for doing so and when once the discretion is conferred by a statute upon an authority, such a discretion is required to be exercised on sound lines. It is one of the important factors to be considered while dealing with an application seeking condonation of delay as to whether grave and irreparable injury or hardship will be caused to the person concerned and as to whether or not the interests of justice would be served better, in condoning the delay. In the instant case, there is no dispute or denial of the fact that the Return of Income filed by the Respondent/Assessee for the Assessment Year 2010-11, has been uploaded sometime past 00.00 hours on 15.10.2010. One can take judicial notice of the fact that uploading of Return requires not only an effort but also consumes sometime. If the Assessee has encountered certain hardship or difficulty in uploading his return, as alleged by him due to a technical snags in the website of the Income Tax Department due to the last hour rush of filing of Returns, the delay deserves to be condoned.

7. Shri.T.Ravikumar, learned Standing Counsel for the Income Tax Department made strenuous effort to convince us that for the reasons assigned by the Assessee for the delay in filing the Return, the delay should not be condoned. He has specifically drawn our attention to the contents of the counter affidavit filed by the Department in W.P.No.5137 of 2015, particularly to the contents of paragraph 4 thereof.

8. We are of the opinion that an order passed by an Administrative or Quasi-Judicial Authority must necessarily be tested for its validity with reference to the reasons assigned and found on record. The reasons cannot be supplemented subsequent to the passing of such an order by furnishing any other memorandum containing additional reasons or by way of explanations in the form of an affidavit. If such subsequent improvements are to be relied upon, an order which when originally passed, which might be infirm may pass off approval for the reasons which are not available on record initially. ("The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji

(1) "Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to, do. Public orders made by public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself." Orders are not like old wine becoming better as they grow older:") (Mohinder Singh Gill & Anr vs The Chief Election Commissioner reported in 1978 AIR 851, 1978 SCR (3) 272). Therefore, we decline to concede the request of Shri.T.Ravikumar, to take into account and consideration the contents of paragraph 4 of the counter affidavit in particular and contents of the counter affidavit in general, while judging the validity and correctness of the order passed by the Board on 05.05.2014.

9. When once an authority has been conferred discretion to condone the delay, application seeking condonation of delay of one day cannot be rejected for such reasons as are assigned by the Board in its order dated 05.05.2014. Hence, we are of the opinion that the Board has not exercised its discretion properly in the matter and in keeping with the legal principles relevant for such consideration. Hence, we have no hesitation to come to the conclusion that the learned Single Judge has rightly allowed the writ petition and set aside the order dated 05.05.2014 passed by the Board.

10. The net result is, the delay in filing the Return of Income by the Respondent/Assessee for the assessment year 2010-2011, beyond 15.10.2010 stands condoned. The Assessing Officer will now process the Return of Income of the Respondent/Assessee for the Assessment Year 2010-11, strictly in accordance with law.

Writ Appeal stands dismissed at the admission stage. No costs. Consequently, C.M.P.No.17100 of 2016 is closed.

Sd/-
Asst.Registrar (CS V.)

/true copy/

Sub Asst. Registrar

gr.

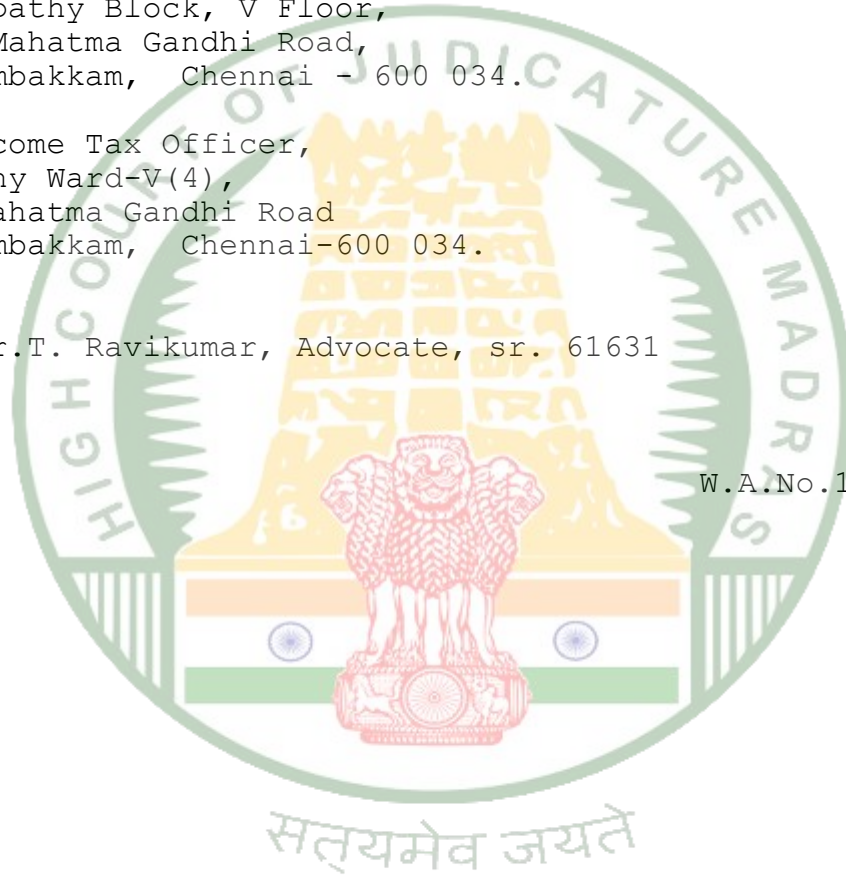
To

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1 cc to Mr.T. Ravikumar, Advocate, sr. 61631

W.A.No.1314 of 2016

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