IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:14.12.2017
Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice K.RAVICHANDRABAABU

Tax Case Appeal No.604 of 2017

M/s.Eswaran & Sons Engineers
Ltd., Chennai-35. ...Appellant

Vs

The Assistant Commissioner of
Income Tax, Corporate Ward 2(1),
Chennai-34. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 04.1.2017 made in MP.No.238/Mds/2016 in ITA.No.1627/Mds/ 2015 on the file of the Income Tax Appellate Tribunal, 'D' Bench, Chennai for the assessment year 2006-07 against the orderr of the Commissioner of Income Tax(A)-IV Chennai dated 1/10/2014 in ITA.938/13-14 against the order dt.31.12.2008 in PAN/GIR No.AAACE1363P of the Deputy Commissioner of Income Tax Company Circle II(1), Chennai 34.

For Appellant : Mr.R.Venkatanarayanan for
M/s.Subbaraya Aiyar Padmanabhan
For Respondent: Mr.Karthik Ranganathan

Judgment was delivered by T.S.SIVAGNANAM,J

Mr.Karthik Ranganathan, learned Standing Counsel accepts notice for the respondent. Heard both.

2. This appeal has been filed by the assessee raising the following substantial questions of law :

> "i. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is correct in law in holding that the appellant had not shown sufficient cause for the delay of 173 days in filing the appeal and dismissing the appeal as not maintainable ? and
>
> ii. Whether the finding of the Income Tax Appellate Tribunal that the appellant had not shown sufficient cause for the delay of 173 days in filing the appeal is supported by materials and evidence on record and is not perverse ?"

3. The Tribunal, by the impugned order dated 04.1.2017, dismissed the miscellaneous petition filed by the assessee in MP.No.238/Mds/2016 praying for condonation of the delay of 173 days in filing the appeal.

4. In fact, on the earlier occasion, an appeal was filed before the Tribunal. The Tribunal considered the affidavit filed by the assessee for condonation of delay in filing the appeal, found that there were no reasons given in the affidavit and held that sufficient cause was not shown for condonation of delay. Accordingly, the earlier appeal was dismissed on 10.5.2016. After the dismissal of the earlier appeal, the assessee filed the present miscellaneous petition wherein they have set out the reasons for the delay.

5. In the affidavit filed in support of the present miscellaneous petition, the assessee stated that they stopped operations for six years, that most of the employees had left the company and that the copy of the order passed by the Commissioner of Income Tax (Appeals) was received only on 24.11.2014. It was further stated in the affidavit that the Managing Director, who was aged about 77 years and who was taking care of the affairs of the company, met with an accident on 05.12.2014 and suffered grievous injuries, that three ribs were fractured apart from other severe injuries and that this led to his hospitalization and he was immobilized for a few months. It was also stated in the affidavit that he suffered heart attack and that therefore, he could not attend office. In support of such a stand, the assessee produced the discharge summary to establish that the Managing Director had suffered injuries in an accident and subsequently had a massive heart attack.

6. The Tribunal, on going through the same, opined that the unsigned medical discharge summary cannot be held to be a valid medical certificate.

7. However, we find that the bona fides of the claim made by the assessee were not disputed by the Revenue by producing any other material to show that the stand taken by the assessee was false. The settled legal principle is that law of limitation has been founded as a public policy and not intended to defeat the rights of the parties. Courts have been very strict in condonation of delay regardless of the number of days where it has been established that the party, who approached the Court, belatedly had done so for certain mala fide reasons or with ulterior motive. No such allegation has been attributed to the assessee in this case.

8. We are inspired by the earlier decisions of the Hon'ble Supreme Court in the cases of

(i) N.Balakrishnan Vs. M.Krishnamurthy [reported in (2008) 228 ELT 162] wherein the relevant portions read as follows :

> ""9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a

certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

"10. ......The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice.... Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly....

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice.....

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation......"

(ii) Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai (2012)5 SCC 157 wherein the Apex Court dealt with Section 5 of the Limitation Act and more particularly the expression 'sufficient cause', clarified and discussed with reference to object of the Limitation Act and extent of leniency to be shown in public interest in condonation of delay by the State machinery. Though the High Court's order to condone the delay was set-aside by the Apex Court, it was held that expression sufficient cause should be construed liberally on facts without any hard and fast rules. It has been further observed that substantive right of parties should not be ignored because of delay, but a distinction must be made between the delay of few days and inordinate delay causing prejudice to the other side and that no premium can be given to total lethargy or utter negligence. It has also been observed that condonation of delay cannot be held as a matter of course by accepting the plea that dismissal of the matter on the ground of limitation will cause injury to public interest. In this reported case, there was delay of seven years and therefore, the Apex Court observed as such and refused to condone the delay, more particularly when explanation for such delay was prima facie found as concocted and causing prejudice to private appellant when the issue was pertaining to demolition. It was further observed that explanation regarding advocate's transfer has no bearing on the issue and that explanation offered was silent about the events and persons involved and credible causes for such delay. Therefore also, though in this reported judgment, delay has not been condoned, it cannot be the rule of law that delay cannot be condoned even if sufficient cause is shown, since, in the present case, condonation of delay was practically refused because of the particular facts on record delay of seven years with absence of proper explanation and concocted explanation for condonation of delay. Therefore, unless there is such reason in the case on hand, such decision cannot be applied to every cases blindly without verifying as to whether cause for delay is sufficient or not; and

(iii) State of Rajasthan Vs. Bal Kishan Mathur [reported in 2014 (1) SCC 592] wherein it has been held that in a situation where there has been no gross negligence or deliberate inaction or lack of bonafides, this Court has always taken a broad and liberal view so as to advance substantial justice instead of terminating a proceeding on a technical ground like limitation and that unless the explanation furnished for the delay is wholly unacceptable or if no explanation whatsoever is offered or if the delay is inordinate and third party rights had become embedded during the interregnum, the Courts should lean in favour of condonation.

9. Therefore, we are of the opinion that ends of justice would be met if the delay in filing of the appeal is condoned, as we find that the delay of 173 days cannot be stated to be an inordinate delay. We can take judicial notice of the fact that several appeals filed by the Revenue themselves are presented with delay. But, the Courts, considering the question of law

raised, are gracious enough to condone the delay and not to non suit the Revenue on a technical ground.

10. The learned Standing Counsel for the Revenue contended that the order passed by the Tribunal dated 10.5.2016 dismissing the appeal got merged with the order passed in the miscellaneous petition, which is impugned in this appeal and that therefore, the Tribunal was fully justified in rejecting the claim of the assessee.

11. We are informed that as against the order passed by the Tribunal dated 10.5.2016, the assessee filed an appeal in TCA.SR.No.14641 of 2017 and it is yet to be numbered. Having satisfied that the delay has been explained, that the delay not being inordinate and that there being no mala fides attributed against the assessee, we are of the opinion that the delay should be condoned. Since the order dated 10.5.2016 is stated to be merged with the present impugned order, the necessity to entertain a separate appeal against the order dated 10.5.2016 does not arise.

12. Therefore, the questions of law as framed are answered in favour of the assessee and against the Revenue. The above tax case appeal is allowed, the delay of 173 days in filing the appeal is condoned and the Tribunal is directed to entertain the appeal and decide the matter on merits. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To
1.The Income Tax Appellate Tribunal, 'D' Bench, Chennai.
2.The Assistant Commissioner of Income Tax, Corporate Ward 2(1), Chennai-34.
3.The Deputy Commissioner of Income Tax Company Circle II (1), Chennai -34
4.The Commissioner of Income Tax (Appeals IV), Chennai

+1cc to M/s.Karthik Ranganathan, Advocate SR.No.89803
+1cc to M/s.Subbaraya Iyyer Padmanabhan, Advocate Sr.No.89796

TCA.No.604 of 2017

GMI(CO)
sm:9.1.2018