IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.12.2017

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam
&
The Hon'ble Mr.Justice K.Ravichandrabaabu

T.C.A.No.664 of 2017

Cherraan Properties Ltd.,
Cheran Towers,
78, Arts College Road,
Coimbatore - 641 018,
PAN : AABCC 0860G. ...Appellant

Vs.

The Assistant Commissioner of Income Tax,
Company Circle - 1(1),
Coimbatore. ...Respondent

Prayer:
Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order, dated 19.05.2017, in I.T.A.No.1114/MDS/2014 on the file of the Income Tax Appellate Tribunal, B/SMC Bench, Chennai, which was preferred against the Order dated 23/09/2013 by the Commissioner of Income Tax (appeals)-I Coimbatore in Appeal No:394/11-12, against the Order dated 30/12/2011 For the Assessment Year 2004-05 by the Assistant Commissioner of Income Company Circle-1(1) Coimbatore.

For Appellant : Mr. M.P.Senthil Kumar
For Respondent : Mr. S.Rajesh

JUDGEMENT

(Judgement of the Court was delivered by T.S.Sivagnanam, J.,)

Heard Mr. M.P.Senthil Kumar, the learned counsel appearing for the appellant and Mr.S.Rajesh, the learned Junior Standing Counsel appearing for the Revenue.

2. This Appeal filed by the assessee is directed as against the order passed by the Income Tax Appellate Tribunal, Chennai (in short, Tribunal) in I.T.A.No.1114/Mds/2014, dated 19.05.2017.

3. The Tribunal, by the impugned order, dated 19.05.2017, dismissed the appellant's Appeal as being time barred. The Appeal was presented with a delay of 155 days, and the explanation given by the assessee is that, the order passed by the Commissioner of Income Tax (Appeals) (for short, CIT (Appeals) was received by an employee, and he has not brought to the notice of the assessee, and the assessee was under bona fide belief that the matter is still pending before CIT (Appeals) and only after the employee handed over all the Income Tax material records, when he resigned from his employment, and while perusing the files, the assessee came to know about the order passed by the CIT (Appeals), and therefore, prayed for condonation of delay.

4. The Tribunal took into consideration the factual position and the conduct of the assessee, and refused to condone the delay. Challenging the said order, the assessee has filed this Appeal, raising the following substantial questions of law:-

> "(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in dismissing the Appeal as unadmitted in limine by declining to condone the delay caused in filing the Appeal?
>
> (ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in dismissing the Appeal as unadmitted by not condoning the delay without judiciously exercising the power in accordance with the provisions of sub-section (5) to section 253 of Income Tax Act, 1961?"

5. On a reading of the order passed by the Tribunal, we find that the Tribunal has recorded, as to how, the assessee has not been co-operating with the assessment proceedings right from the stage before the Assessing Officer, and there can be no valid explanation, that can be given by the assessee for their conduct. The records should speak for themselves.

6. The findings recorded by the Tribunal may be technically right. However, what passes in our mind is that, the Appeal remedy under the provisions of the Income Tax Act, 1961 is a very valuable remedy, and such remedy is available before the Tribunal, which is a Judicial Tribunal (first forum) where, the correctness of the decision taken by the statutory authority is to be tested. That apart, we find that the delay is not an inordinate delay, but, it is 155 days. However, while

noting that the appellate remedy is a valuable right and simultaneously, taking note of the conduct of the assessee, we are inclined to grant indulgence to of the assessee, subject to certain conditions (mentioned infra).

7. Accordingly, we direct the appellant/assessee to pay 50% of the disputed tax, which, according to the assessment order, is Rs.11,95,591/- within a period four weeks from the date of receipt of a copy of this order. If the appellant complies with the condition, i.e. by remitting 50% of the disputed tax, then, the Tribunal is directed to condone the delay, and take the Appeal on its file, and take a decision on merits and in accordance with law. However, if the assessee fails to comply with the conditional order within the stipulated time, the benefit of this order will not enure to the assessee/appellant and this Appeal would be automatically dismissed, without further reference to this Court. On the above terms, the substantial questions of law raised in this Tax Case Appeal are answered accordingly.

8. Accordingly, this Tax Case Appeal stands disposed of. No costs.

Sd/-
Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

msm/sd

To

1.The Officer in Charge,
Income Tax Appellate Tribunal,
B/SMC Bench, Chennai.

2.The Commissioner of Income Tax (Appeals)-I,
Coimbatore.

3.The Assistant Commissioner of Income Tax,
Company circle-I(1),
Coimbatore.

+1cc to Mr.G.Baskar, Advocate SR.No.89382

T.C.A.No.664 of 2017

TM(CO)
GN(17/01/2018)