IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2018

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE DR.JUSTICE ANITA SUMANTH

Tax Case Appeal No.441 of 2009

M/s. Super Spinning Mills Ltd.
Elgi Towers, Green Fields
737-D, Puliakulam Road
Coimbatore 641 045. ...Appellant/Appellant

Vs.

The Assistant Commissioner of Income Tax
Company Circle 1(2)
Coimbatore. ... Respondent/Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai 'A' Bench, dated 09.01.2008, in ITA No.572/MDS/2008, against the orders of Commissioner of Income Tax (Appeals)-I, Coimbatore dated 9.1.2008 in A.No.106/07-08, and dated 31.10.2007 in A.No.366/06-07, and Commissioner of Income Tax (Appeals) Coimbatore, dated 30.06.92 in ITA No.226-C/92-93 and arising out of the Assessment order of Deputy Commissioner of Income Tax, Special Range-II, Coimbatore dated 30.3.92 in PAN/GIR No.CY-2486.

For Appellant : Mr.S.Sridhar

For Respondent : Mr.T.R.Senthil Kumar
Senior Standing Counsel

J U D G M E N T

(Delivered by Dr.Vineet Kothari,J)

The assessee has filed this appeal aggrieved by the order passed by the Income Tax Appellate Tribunal on 09.01.2009 for the assessment year 1989-90 and other assessment years rejecting the appeal filed by the assessee against the order passed by the Commissioner of Income Tax (Appeals), who dismissed the first appeal of the assessee as time barred.

2. Before the Commissioner of Income Tax (Appeals), the appeal was filed in the present case for the assessment year 1989-90 on 08.01.2007, against the original assessment order for the assessment year 1989-90 passed by the Assessing Authority on 30.3.1992, which came to be remanded back to the Assessing Authority by the Income Tax Appellate Tribunal on 23.12.2004 and the appeal effect order was passed on 07.02.2006. Against the fresh assessment order dated 07.02.2006, the assessee, instead of filing a regular appeal, filed an application for rectification under Section 154 of the Income Tax Act on 14.8.2006, which came to be rejected by the Assessing Authority on 19.12.2006, holding that rectification application was not maintainable and accordingly, the assessee preferred regular appeal on 08.01.2007, which was however dismissed by the learned Commissioner of Income Tax (Appeals) on 31.10.2007 and that order came to be upheld by the Income Tax Appellate Tribunal by the impugned order dated 09.01.2009.

3. The present appeal was admitted by a Coordinate Bench of this Court on 20.11.2009 with the following substantial question of law:

> "(1) Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal is right in law, by upholding the order of the Commissioner of Income Tax (Appeals) in not condoning the delay in filing the appeal even though the assessee was pursuing alternative remedy as per the provisions of the Income Tax Act?
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> (2) Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal is right in law in not condoning the delay and letting the meritorious matter being disposed off at the threshold and resulting in denial of justice?"

4. Having heard the learned counsel for the parties, we are of the opinion that in the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) was not justified in not condoning the delay in filing of the appeal by the assessee, who took recourse to rectification application after the first round of assessment ended up in a remand by the Income Tax Appellate Tribunal and fresh assessment came to be passed by the Assessing Officer.

5. In the second round of litigation before the Appellate Authorities, instead of deciding the appeal on merits, the Commissioner of Income Tax (Appeals) chose to decide the appeals as time barred, though the assessee was constantly pursuing his

remedy before the concerned Authority, albeit inadvertently by recourse to Section 154 of the Act. It is not that the assessee was not vigilant and not taking his remedial measures. The powers of the Appellate Authorities are coextensive with that of the Assessing Authority and even though the first round of assessment resulted in remand by the Income Tax Appellate Tribunal and by the said fresh assessment order also certain grievances arose to the assessee, the learned first Appellate Authority, viz. Commissioner of Income Tax (Appeals) also ought to have taken up the appeal and decided the same on merits in accordance with law. It is unfortunate that even the second appeal to the Income Tax Appellate Tribunal, resulted in its dismissal at the hands of the Income Tax Appellate Tribunal and thus, the merits of the case in the second round of litigation have remained undecided by both the higher appellate forums under the Act.

6. In these circumstances, we are inclined to allow the present appeal of the assessee and direct the first Appellate Authority to decide the appeal of the assessee on merit. We accordingly allow the appeal and set aside both the orders passed by the Commissioner of Income Tax (Appeals) on 09.01.2008 and the order of the Tribunal dated 09.1.2009 for the assessment year 1989-90 and restore the appeal on the file of the Commissioner of Income Tax (Appeals) to be decided again on merits in accordance with law. Without any further notice, the parties may appear in the first instance before the Commissioner of Income Tax (Appeals) on 18.01.2019 and the appeal may be decided within a period of six months thereafter.

The appeal is allowed and the questions of law are answered in favour of the assessee, as aforesaid. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kpl
To

1.The Assistant Commissioner of Income Tax,
Company Circle-(2), Coimbatore.

2.The Deputy Commissioners of Income Tax,
Special Range-II, Coimbatore.

3.The Commissioner of Income Tax,
Coimbatore.

4.The Income Tax Appellate Tribunal,
A -Bench, Chennai.

+1cc to Mr.T.R.Senthilkumar, Advocate Sr.87671
+1cc to Mr.S.Sridhar, Advocate Sr.88037

TCA No. 441 of 2009.

sj[co]
srg 14/02/2019