IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2018

CORAM

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

Tax Case (Appeal) No.469 of 2009

M/s.Bannari Amman Sugars Ltd.,
1212, Trichy Road,
Coimbatore 641 018. ... Appellant

Vs.

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

Tax Case Appeal filed under Sec. 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai, dated 5.1.2009 in ITA No.439/Mds/2008 against the order dated 09/01/2008 made in Appeal No.102/07-08 on the file of the Commissioner of Income Tax (Appeals)-I, Coimbatore and against the order dated 23/02/2006 and made in PAN.GIR No.AACB8933G/B-09 on the file of the Assistant Commissioner of Income Tax, Company Circle I(2), Coimbatore.

For Appellant : Mr.R.Vijayaraghavan for M/s.Subbaraya Aiyar

For Respondent : Mr.T.R.Senthilkumar Senior Standing Counsel

JUDGMENT

(Judgment of the court was delivered by DR.ANITA SUMANTH,J.)

This appeal is filed challenging an order of the Income Tax Appellate Tribunal dated 5.1.2009 in relation to assessment year 2003-04.

2. The following two substantial questions of law have been admitted for hearing:-

> "i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in confirming the order of the Commissioner of Income

Tax (Appeals) dismissing the appeal without condoning the delay of 580 days in filing the appeal?

ii) Whether, on the facts and in the circumstances of the case, the Tribunal ought to have appreciated that the appellant had reasonable cause for delay in filing the appeal before CIT(A) and therefore ought to have directed the CIT(A) to condone the delay and decide the appeal on merits?"

3. The brief sequence of dates and events that would be relevant for the disposal of the appeal are set out hereunder:-

(i) An order of Assessment dated 23.2.2006 came to be passed making two disallowances, one relating to taxability of Sales Tax and Excise Duty as part of sale proceeds and the second in relation to taxability of Excise Duty on exports.

(ii) As the assessee was of the view that the adjustments as above constituted an error apparent on the face of the record, an application was filed in terms of Section 154 of the Income Tax Act (in short 'Act') seeking a rectification of the errors.

(iii) An order was passed on 10.4.2006 rejecting the application.

(iv) An appeal was filed against the aforesaid order which was decided by the Commissioner of Income Tax (Appeals) (in short 'CIT(A)') on 17.10.2007 as against which a second appeal was filed by the appellant before the Income Tax Appellate Tribunal in ITA No.439/Mds/2008.

(v) In consideration of the appeal, the Tribunal allowed the issue relating to the taxability of sales tax collections excluding the sales tax and excise duty therefrom. The assessment was confirmed insofar as it relates to the taxability of excise duty on exports.

(vi) According to Mr.R.Vijayaraghavan, learned counsel for the appellant, in the course of hearing before the appellate authority, the appellant was given to understand that the adjustments did not constitute an error apparent on record amenable to section 154 and accordingly, it would be in their interest to file a regular appeal challenging the order of assessment.

(vii) Accordingly, an appeal came to be filed before the CIT (A) challenging the order of assessment dated 23.2.2006 albeit, with a delay of 580 days.

(viii) The appeal was dismissed by the CIT(A), by order dated 9.1.2008, holding, at the threshold, that no justifiable reason had been set out by the appellant explaining the delay.

(ix) The appellant filed a second appeal before the Income Tax Appellate Tribunal, which passed the impugned order dated 12.5.2009.

4. The Tribunal, dealing with the delay of 580 days in filing the appeal, has come to the conclusion that the reasons for the delay were not persuasive. According to the Tribunal, the appellant was assisted by a competent Chartered Accountant and thus, ought to have filed the appeal in time.

5. Having heard the learned counsel for the appellant and the Revenue, we are of the view that the reasons set out seeking a condonation would justify the delay of 580 days. The assessee had originally taken a conscious decision to file a petition under section 154, being of the opinion that the adjustments made amounted to a rectifiable error. This petition was filed within time. Appeals, thereafter were also filed in time and pursued diligently. It was only in the course of hearing before the CIT(A) that the appellant was advised that it would be prudent to challenge the original order of assessment by way of regular appeal.

6. Para 8 of the petition for condonation is extracted below:-

> "Now, when the appeal against section 154 orders were posted for hearing by the Honourable Commissioner of Income Tax (Appeals)-I, a query was raised as to why appeal against the order under section 143(3) was not filed. In this background, your appellant company has now hastened to file the present appeal against the assessment order in terms of section 246A of Income Tax Act. The statement of facts and grounds of appeal alongwith appeal memorandum are separately filed before your goodself today, along with this petition to condonation of delay."

7. The narration of facts leads us to conclude that there was a bona fide reason for the assessee to have filed the appeal belatedly. We are thus of the view that the delay of 580 days in filing the appeal ought to have been condoned by the Tribunal and are inclined to set aside the order of the Tribunal rejecting the appeal as belated. The Tribunal is requested to adjudicate upon the appeal on merits. The appeal relating to assessment year 2003-2004 and the appeal itself being of the year 2008, this exercise will be carried out within a period of one month from the date of receipt of a copy of this order. The Tax Case (Appeal) is allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

ssk

Sub Assistant Registrar

To

1) Income Tax Appellate Tribunal,
Madras 'A' Bench, Chennai,

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

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

+1 cc to Mr.T.R.Senthil Kumar, Advocate, S.R.No.79908.

+1 cc to M/s.Subbaraya Aiyar, Advocate, S.R.No.79913.

T.C.A.No.469 of 2009

VD(CO)
SSM(09/01/2019)