

In the High Court of Judicature at Madras

Dated : 08.10.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal No.997 of 2008

M/s.Elnet Technologies Ltd.,
Chennai-113. ...Appellant

Vs

The Deputy Commissioner of
Income Tax, Chennai-34. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 07.4.2008 in ITA No.801/Mds/2002 on the file of the Income Tax Appellate Tribunal Chennai 'A' Bench for the assessment year 1997-98.

For Appellant : Mr.R.Venkatanarayanan

For Respondent : Mr.S.Ramesh, Standing Counsel

Judgment was delivered by T.S.SIVAGNANAM,J

We have heard the learned counsel on either side.

2. The assessee preferred this appeal challenging the order passed by the Income Tax Appellate Tribunal dated 07.4.2008 in ITA.No.801/Mds/2002 for the assessment year 1997-98.

3. The above appeal has been admitted on 21.7.2008 on the following substantial questions of law :

[i. Whether, on the facts and circumstances of the case, the Tribunal was right in law in confirming the order of the Commissioner of Income Tax (Appeals) dismissing the appeal in limine without condoning the delay of 211 days in filing the appeal ? and
ii. Whether, on the facts and circumstances of the case, the Tribunal ought to have appreciated that the appellant had reasonable cause for delay in filing the appeal before the Commissioner of Income Tax (Appeals) and therefore, ought to have directed the Commissioner of Income Tax (Appeals) to condone the delay and decide the appeal on merits ?]

4. The assessee company is a joint venture company promoted by the Electronic Corporation of Tamil Nadu (ELCOT) - an undertaking of the Government of Tamil Nadu and New Era Technologies Private Limited. The object for promoting the said company was for constructing and maintaining software technology park, which houses modules having infrastructure facilities required for the software industry like air conditioner, internet connection, etc., which were let out by the company to its customers.

5. For the assessment year under consideration i.e. 1997-98, the assessee filed its return of income

on 20.11.1997 declaring a loss of Rs.2,22,19,360/-. Subsequently, a revised return was filed on 12.2.1998 declaring a loss of Rs.2,21,16,850/-. The assessee's case was selected for scrutiny and a notice under Section 143(2) of the Income Tax Act, 1961 (for brevity, the Act) dated 20.11.1998 and another notice under Section 143(1) of the Act dated 09.9.1999 were issued. The scrutiny assessment was completed under Section 143(3) of the Act by an order dated 10.3.2000 determining the loss at Rs.2,19,13,415/-. While completing the assessment, the Assessing Officer treated the income from letting out of the modules as income from other sources and denied the set off of carry forward losses.

6. According to the assessee, the order of assessment dated 10.3.2000 was served on them on 31.3.2000. Against the order of assessment, the appeal to the Commissioner of Income Tax (Appeals) [for short, the CIT (A)] should have been filed on or before 30.4.2000. However, it was filed on 18.12.2000 with a delay of 231 days. The Director and Chief Executive Officer (for brevity, the DCEO) of the assessee filed an affidavit explaining the reasons for the delay. However, the CIT (A) dismissed the appeal by order dated 19.12.2001 stating that it is not a fit case for condoning the inordinate delay of 231 days. On further appeal by the assessee, the Tribunal, by the impugned order, confirmed the order passed by the CIT (A). Being aggrieved by the orders passed by both the CIT (A) and the Tribunal, the assessee is before us by way of this appeal.

7. We have perused the affidavit dated 19.12.2001 filed by the DCEO of the assessee before the CIT(A) wherein it has been stated that as soon as the assessment order was received, it was placed before the DCEO, who is an IAS Officer nominated by the Government. The said DCEO directed the matter to be placed before the Board of Directors for a decision to be taken for filing an appeal. Subsequently, the IAS Officer, who was the then DCEO, resigned with effect from 20.4.2000, as a result of which, a decision could not be taken. The assessee also filed a copy of the resignation letter before the CIT (A) in the form of annexure. The assessee further stated that the post of DCEO remained vacant till 15.11.2000 and subsequently, a new DCEO was appointed by the Government with effect from 15.11.2000. A copy of Form No.32 filed by the company before the Registrar of Companies along with an affidavit was also annexed. The new DCEO, after considering the issue, took up the matter before the Board of Directors and a decision was taken to file the appeal through the counsel for the appellant. Therefore, the appellant prayed that the delay might be condoned.

8. However, the CIT (A) was of the view that the explanation offered cannot be said to be sufficient cause for condoning the delay of 231 days. He opined that in case the DCEO was not available, there were other Directors of the assessee, who could have taken a decision to file the appeal within time. The CIT (A) referred to the decision of the Hon'ble Supreme Court in the case of Vedabai (a) Vijayanatabai Baburao Patel Vs. Shantaram Baburao Patel and Others [reported in (2001) 253 ITR 798] and accordingly, dismissed the appeal.

9. On further appeal by the assessee, the Tribunal, in the impugned order, agreed with the view expressed by the CIT(A). The Tribunal held that though the then DCEO had resigned the post, the company had been working during the relevant period, that the other Directors were available and that the delay was caused due to negligence and inaction on the part of the assessee.

10. Firstly, we wish to point out that the Revenue has not filed any counter affidavit disputing the correctness of the affidavit filed by the DECO in support of the delay condonation petition. Thus, the averments set out by the assessee in the affidavit dated 19.12.2001 remained uncontroverted. In other words, it was never disputed by the Revenue. The stand taken in the affidavit dated 19.12.2001 by the assessee before the CIT (A) cannot be said to be lacking any bona fides. The relevant documents in support of the stand taken by the assessee were appended to the affidavit and unfortunately, the CIT (A) did not even venture to deal with those annexures. The CIT (A) ought to have considered the fact that the assessee was a joint venture company, which was controlled by the Government of Tamil Nadu and that the DCEO had to be nominated by the Government of Tamil Nadu. Though the Director, who was functioning at the time when the assessment order was received, took a decision to refer the matter to the Board for filing an appeal, subsequently, he resigned the post, as a result of which, a vacuum was created. Though the Board was in existence,

as per the Rules of the company, a decision had to be taken by the DCEO. This submission made by the assessee has not been disputed by the Revenue.

11. Furthermore, law of limitation is founded on the principle to give finality to orders and judgments. The intention is not to deny the rights of the parties on technical grounds. In cases where there are mala fides on the part of the litigants to approach Courts within time, then Courts have taken strict view, however less the number of days of delay may be. Ordinarily, no litigant will lodge the case belatedly.

12. In the instant case, the Revenue has not established any mala fide reasons on the part of the appellant to belatedly file the appeal before the CIT (A). Even in the decision in the case of Vedabai (a) Vijayanatabai Baburao Patel, the Hon'ble Supreme Court held that there is no hard and fast rule, which can be laid down while considering an application for condonation of delay. It was further held that Courts should adopt a pragmatic approach. The Tribunal, while concurring with the view taken by the CIT(A), held that the assessee and its Directors were guilty of negligence. However, we do not find any such gross negligence on the part of the appellant especially in the light of the reasons assigned for filing the appeal belatedly, which have not been controverted by the Revenue. Therefore, we are of the considered view that the matter should not be shut down on technicalities and a liberal approach should be taken bearing in mind the reasons assigned by the appellant, as the assessee is a joint venture company controlled by the Government of Tamil Nadu and its DCEO, who is invariably in the cadre of IAS Officer, is being nominated by the Government and he has to take a decision to file an appeal.

13. The learned counsel for the appellant has submitted that in the assessee's own case for the assessment years 1995-96, 1996-97 and 2001-02, a Division Bench of this Court in the decision reported in (2013) 213 Taxman 129, decided the very same issue in favour of the assessee.

14. The learned Standing Counsel for the Revenue, on the other hand, has referred to the decision of another Division Bench of this Court in the case of CIT Vs. Keyaram Hotels Private Limited [TCA.No.89 of 2010 dated 22.6.2018], in which, the decision was rendered in favour of the Revenue.

15. In our considered view, we do not wish to express any opinion on the decisions relied upon by the assessee or the Revenue and are inclined to remand the matter for a fresh consideration on merits.

16. In the result, the above tax case appeal is allowed, the substantial questions of law are answered in favour of the assessee and the order passed by the Tribunal is set aside. The matter is remanded to the Tribunal to take a decision on the merits of the case leaving it open to the parties to canvass all the points before the Tribunal. No costs.

08.10.2018

RS

T.S.SIVAGNANAM,J

AND

V.BHAVANI SUBBAROYAN,J

RS

Internet : Yes

To

- 1.The Deputy Commissioner of Income Tax, Chennai-34.
- 2.The Income Tax Appellate Tribunal, Madras 'A' Bench.

TCA.No.997 of 2008

08.10.2018