IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Tax Case Appeal No.734 of 2017

M/s.Rattha Holdings Company Pvt. Ltd.,
37, TTK Road, Alwarpet,
Chennai - 600 018. ...Appellant

-vs-

The Deputy Commissioner of Income Tax,
Corporate Circle - 5(1),
121, Uthamar Gandhi Salai,
Chennai - 600 034. .... Respondent

Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal "C" Bench, Chennai dated 13/04/2016 in I.T.A.No.2051/MDS/2015 for the assessment year 2009-10 and against the order of the Commissioner of Income Tax (Appeals)-V, Chennai - 34 dated 31.12.2012 and made in CIT(A)-V/ITA No.322/2011-12 against the order passed by the Assistant Commissioner of Income Tax, Company Circle V(3), Chennai - 34 dated 30.12.2011 (PAN.AACCR8160K) for the assessment year 2009-10.

For Appellant : Mr.R.Sivaraman

For Respondent : Mrs.R.Hemalatha
Senior Standing Counsel

J U D G M E N T

(Judgment of the Court was delivered by
T.S.SIVAGNANAM,J.)

This appeal by the assessee filed under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as the "Act), is directed against the common order passed by the Income Tax Appellate Tribunal "C" Bench, Chennai, in I.T.A.No.2051/MDS/2015 for the assessment year 2009-10.

2. Though the impugned order passed by the Tribunal relates to other assessment years as well, for the assessment year 2010-

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2011, the assessee has filed a separate appeal in T.C.A.No.735 of 2017, which has been admitted by this court and the very same substantial question of law is pending in other cases as well.

3. The assessee has filed this appeal raising the following substantial question of law:-

> "Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that there is no sufficient and good reason to condone the delay of 914 days in filing the appeal and thereby dismissing the appeal filed by the Appellate Tribunal?"

4. Heard Mr.R.Sivaraman, learned counsel for the assessee and Mrs.R.Hemalatha, learned Senior Standing Counsel for the Revenue.

5. The short question which falls for consideration is whether the Tribunal was right in dismissing the assessee's appeal on the ground that it was filed with an inordinate delay of 914 days in filing the appeal and the reason assigned by the assessee is flimsy.

6. We have gone through the reasons assigned by the Tribunal in para 10.1 of the impugned order. It is no doubt true that the delay is enormous as it is 914 days. However, length of delay alone is not always the criteria to reject an appeal. At times, the reasons given by the appellant for lodging the appeal belatedly will be convincing and therefore, the length of delay in such cases will not be a significant factor and what is required to be seen is that the appellant had shown sufficient cause for not preferring the appeal within time. There may be cases where the delay will be very marginal, say less than 50 days, yet, the appellate Court would be justified in dismissing the appeal on the ground of lack of bonafides on the part of the appellant, on account of some malafide reasons or certain other conduct of the appellant which compels the court to dismiss the appeal.

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7. Under normal circumstances, no appellant stands to benefit by lodging the appeal late. We have appeals belatedly filed by the appellant as well as the Revenue before us. Unless and until the delay is actuated by malafides or for certain other reasons with a view to drag on the proceedings, this court has always adopted a liberal approach in condoning the delay.

8. It is true that law of limitation has been founded on the principle to bring finality to proceedings. But it is not intended to foreclose the rights of the parties, where the parties bonafidely approached the appellate Court after the period of limitation.

9. The facts in the instant case is not in dispute and the appellant is guilty of belatedly filling the appeal after 914 days after the appeal time had lapsed. No doubt the explanation offered is not convincing but there is nothing on record brought by the Revenue to show that the appellant had purposely and willfully delayed in filing the appeal within the period of limitation. So far as the assessment for the years 2010-11 and 2011-2012 is concerned, CIT(Appeals) had passed an order on 09.09.2015 and appeal was filed before the Tribunal within time and that appeal has been dismissed and the appellant has filed Tax Case Appeal. Apart from that, substantial question of law raised by the appellant is now pending before this Court in other cases as well.

10. The learned counsel for the appellant has drawn the attention of this Court to the decision of the Division Bench in the case of Commissioner of Income-tax, Central 1, Chennai Vs. Chettinad Logistics (P) Ltd, [2017 248 Taxman 55 (Madras)]. It is his submission that the substantial question of law raised in this appeal is squarely covered by the decision in the case of Chettinad Logistics (supra).

11. The learned counsel for the Revenue submits that the decision in the case of Chettinad Logistics (supra), cannot be applied to the facts of the present case and the decision is distinguishable.

12. Considering the fact that the substantial question of law is pending before this Court in other cases as well, we deem it appropriate that the appellant can be given an opportunity to contest the appeal on merits. However, such opportunity will be subject to certain conditions.

13. Accordingly, the appeal is allowed subject to the condition that the appellant pays a sum of Rs.5,000/- (Rupees Five thousand only) towards Chief Minister's Public Relief Fund within a period of four weeks from today and if the appellant complies with the condition, the order passed by the Tribunal, which is impugned in this appeal shall be set aside and the

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appeal shall be restored to the file of the Tribunal to be heard and decided on merits. It is open to the assessee to place the decision in the case of Chettinad Logistics (supra) before the Tribunal for consideration. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

svki/pds

To

1. The Deputy Commissioner of Income Tax
   Corporate Circle - 5(1),
   121, Uthamar Gandhi Salai,
   Chennai - 600 034.

2. The Income Tax Appellate Tribunal, -C- Bench,
   Chennai

3. The Commissioner of Income Tax (Appeals)-V,
   121, Mahatma Gandhi Road,
   Chennai - 34.

4. The Assistant Commissioner of Income Tax,
   Company Circle V(3),
   Chennai - 34

Copy to: The Officer-in-Charge,
Chief Minister (Special Cell),
Fort St.George,
Chennai.

+1 cc to Mr.R.Sivaraman, Advocate, S.R.No.88536

+1 cc to Mr.T.Ravikumar, Advocate, S.R.No.87632

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PM(CO)
SSM(18/03/2019).

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