

In the High Court of Judicature at Madras

Dated : 13.8.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal No.1021 of 2009

M/s.Universal Cold Storage
Ltd., Chennai-41.Appellant

Vs

The Deputy Commissioner of
Income Tax, Company Circle III(3),
Chennai-34.Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 29.8.2008 made in MP.No.176/Mds/2008 in ITA.No.1725/Mds/ 2004 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench for the assessment year 2000-01, against the order dated 22/02/2006 mde in ITA No.1725/MDS/04 on the file of the Income Tax Appellate Tribunal Bench B Chennai for the assessment year 2000-01, against the order dated 16/03/2004 made in ITA No.13/2003-04/AIII on the file of the Commissioner of Income Tax (Appeals)-IIIV, Chennai for the assessment year 2000-01, against the order dated 27/3/2003 made in GIR No./PAN No.33095-U/AAACU0757D on the file of the Assistant Commissioner of Income Tax Company circle III(3) Chennai, for the assessment year 2000-01.

For Appellant: Mr.A.S.Sriraman

For Respondent: Mrs.S.Premalatha for
Mr.M.Swaminathan

Judgment was delivered by T.S.Sivagnanam, J

We have elaborately heard Mr.A.S.Sriraman, learned counsel for the appellant - assessee and Mrs.S.Premalatha, learned Junior Standing Counsel appearing on behalf of Mr.M.Swaminathan, learned Senior Standing Counsel appearing for the respondent - Revenue.

2. This appeal, filed by the assessee under Section 260A of the Income Tax Act, 1961 (for short, the Act), is directed against the order dated 29.8.2008 made in MP.No.176/Mds/2008 in ITA.No.1725/Mds/2004 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench (for brevity, the Tribunal) for the assessment year 2000-01.

3. The appeal was admitted on 08.12.2009 the following substantial questions of law :

"i. Whether the Appellate Tribunal is correct in law in dismissing the miscellaneous petition filed in terms of Section 254(2) of the Act for the recall of the ex parte order passed in the disposal of the appeal filed before them ? And

ii. Whether the Appellate Tribunal is correct in law in dismissing the miscellaneous petition in terms of Section 254(2) of the Act for the recall of the ex parte order overlooking the provisions of Rule 25 of the Appellate Tribunal Rules, 1963 as well as overlooking the reasons given for adjournment of hearing of the appeal filed before them ?"

4. The assessee is before us challenging the order passed in a miscellaneous petition filed by the assessee to recall the order passed by the Tribunal dated 22.2.2006. The appeal was filed before the Tribunal challenging the order passed by the Commissioner of Income Tax (Appeals)-III, Chennai-34 [for short, the CIT(A)] dated 16.3.2004 whereby the appeal filed by the assessee was allowed.

5. It appears that the appeal was listed before the Tribunal on 17.2.2006, which was stated to be the first date of hearing. On that day, a petition for adjournment was filed by the learned counsel for the assessee. In the said petition for adjournment, it has been stated that the counsel had received instructions from the assessee to represent the matter and requested for an adjournment, as the assessee was not in a position to furnish the appeal records. It has been further stated in the said miscellaneous petition that as against the order passed by the CIT(A), the assessee also filed an appeal and a request was made to the Tribunal to take up both the appeals. The assessee further pleaded that the inconvenience caused to the Tribunal might be regretted.

6. The Tribunal proceeded on the basis that there was no appearance for the assessee and allowed the appeal filed by the Revenue. To recall the order passed by the Tribunal dated 22.2.2006, the assessee filed a miscellaneous petition on 03.7.2008 and it was rejected by the Tribunal by the impugned order on the ground that the assessee was not able to point out any mistake in the said order.

7. In our considered view, no litigant would stand benefited by not appearing before a court or tribunal or belatedly appearing before a court or tribunal. Therefore, the Courts have held that the bona fides of the parties should be examined before a tough decision is taken. The assessee's appeal was partly allowed by the CIT(A). The Tribunal, while recording that none appeared for the assessee, had not referred to the petition for adjournment filed by the assessee's counsel and proceeded to allow the Revenue's appeal by placing reliance on the decision of the Hon'ble Supreme Court in the case of IPCA Laboratories Vs. DCIT [reported in 266 ITR 521].

8. The assessee's case is that the said decision will have no application to the facts of the assessee's case.

9. In any event, in our considered view, 17.2.2006 being the first date of hearing, the Tribunal could have accommodated the request made on behalf of the assessee.

10. It is brought to our notice that the issue before the Tribunal was a recurrent issue and that the assessee succeeded for the earlier years.

11. In the light of the above, we find that the appeal before the Tribunal should be heard on merits, for which reason, the above tax case appeal is allowed. We set aside the order dated 29.6.2008 made in MP.No.176/Mds/ 2008 in ITA.No.1725/Mds/2004 and direct the Tribunal to take up the miscellaneous petition and consider the case of the assessee so that the order dated 22.2.2006 could be recalled and the appeal could be heard on merits. This direction is issued as we are conscious of the fact that the assessee did not impugn the order passed by the Tribunal dated 22.2.2006. Had that been done, we would have been well justified in invoking our jurisdiction to set aside the ex parte order and remit the matter for a fresh consideration. In the absence of a specific challenge to the order dated 22.2.2006, we direct the Tribunal to entertain the miscellaneous petition and re-hear the main matter on merits. The substantial questions of law are left open. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

RS

To

1.The Income Tax Appellate Tribunal, Chennai 'B' Bench.

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

3. The Commissioner of Income Tax Appeals) -IIIV, Chennai

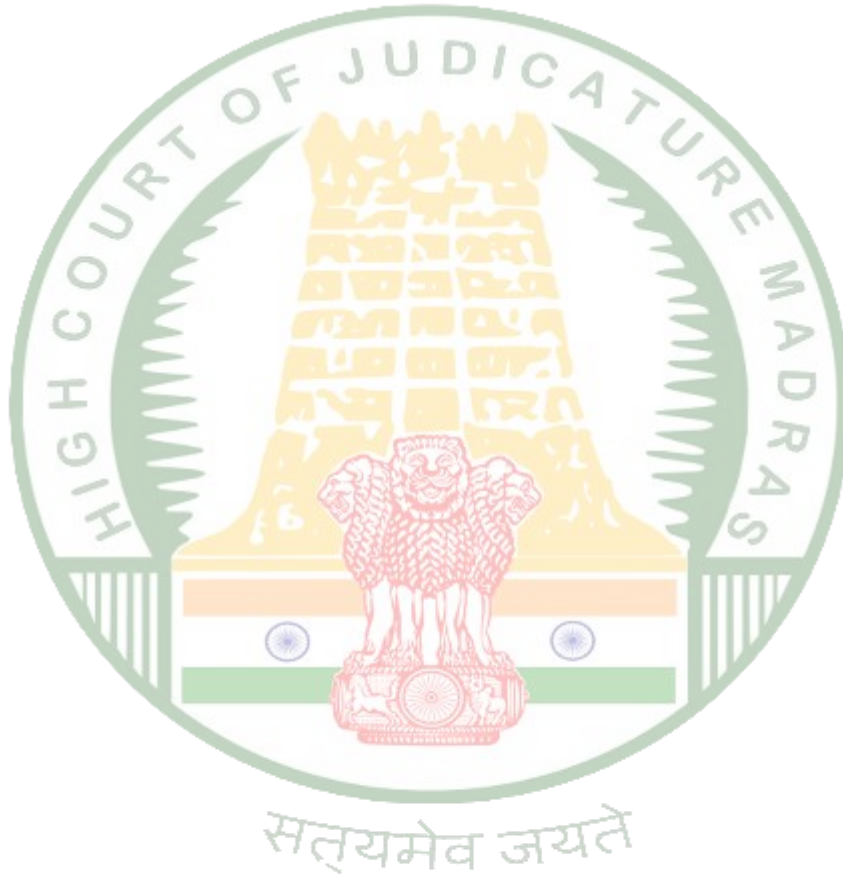
+lcc to Mr.S.Sridhar, Advocate SR.No.68786

+lcc to Mrs.S.Premalatha, Advocate SR.No.69547

TCA.No.1021 of 2009

RSV(CO)

GMV(09/09/2019)



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