IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2019

CORAM:

THE HON'BLE DR. JUSTICE VINEET KOTHARI
and
THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

T.C.(A).No.854 of 2009

M/s.Kathiravan Paper & Boards Pvt. Ltd.,
Sun House, 37-D, C-Colony,
Perumalpuram,
Tirunelveli District. ... Appellant / Appellant

..Vs..

The Deputy Commissioner of Income Tax,
Special Range-II,
Madurai ... Respondent / Respondent

Prayer: Tax Cases (Appeal) are filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai 'B' Bench, dated 04.12.2008 passed in I.T.A.No.1642/Mds/2007 for Assessment Year 1989-1990, against the Order of the Commissioner of Income Tax (Appeals-I), Madurai, dated 27/05/1997 in I.T.Appeal No.157/92-93 and against the order of the Deputy Commissioner, Spl.Range - II, Madurai, dated 17/09/1992 in PAN:49-007-CX-6321/S.R.II for the Assessment year 1989-90.

For Appellant : Mr.M.P.Senthilkumar
Assisted by Ms.Sree Lakshmi Valli

For Respondent : Mr.M.Swaminathan
Assisted by Ms.V.Pushpa
and Ms.S.Premalatha
Senior Standing Counsel

J U D G M E N T

(Delivered by DR.VINEET KOTHARI, J.)

The Assessee has filed this Appeal raising the purported Substantial Questions of Law arising from the order of the learned Income Tax Appellate Tribunal dated 04.12.2008 in dismissing the Appeal filed by the Assessee as time barred which was filed admittedly with a delay of 3599 days.

2. The Assessee had filed the Appeal before the Income Tax Appellate Tribunal, challenging the penalty imposed upon it under Section 271 (1) (C) of the Act which was reduced by the learned CIT (Appeals) from Rs.3,95,100/- to Rs.3,20,000/-. The said addition in the declared income and the consequential penalty was imposed on the ground that the share application money brought in by the Assessee Company which were added as unexplained credit and the impugned penalty under Section 271 (1) (C) was imposed on the Assessee.

3.The learned counsel for the Appellant/Assessee has drawn our attention to the affidavit filed along with the delay condonation application before the learned Tribunal. The relevant extract of which is quoted below for ready reference:

> "1. I was the Managing Director of M/s.Kathiravan Papers & Boards (P) Ltd, the petitioner herein and as such I am conversant with the facts of the case leading to the present petition.
>
> 2. The Petitioner Company was promoted by me, the other major share holders being my sons and wife. The Company commenced its operations of manufacture of during the year 1988 and thus the year under appeal is the first year of assessment.
>
> 3. The major working capital of the Company was a term loan of Rs.24.50 lakhs from Tamilnadu Industrial Investment Corporation (TIIC). Right from inception, the Company has only been incurring losses. The assessed loss for the Assessment Year:1990-1991 itself is Rs.8,37,752 and the returned loss for the A.Year:1991-1992 is Rs.6,59,756.
>
> 4. During early 1992, I suffered a major accident in the factory premises itself. Though by God's grace, I survived, 4 fingers in my right hand was amputated and only portion of the thumb finger survived. I was hospitalised for more than 6 months.
>
> 5. It was during this time that the business of the company came to a grinding halt in my absence. The Company could not re-pay the loan and not even the interest Component. Therefore

TIIC initiated proceedings for recovery. I had no resources to defend and hence TIIC, took over the entire properties of the Company and sold it by Public auction on during 1994. Even after that more than 54 Lakhs was due to TIIC as per the lawyer's notice dated 20.08.97.

6. I am a chronic Cardiac and ulcer patient and undergoing treatment even today. I started a small waste paper shop in a rented premises at Thirunelveli Town for my livelihood. The order of the CIT(A) dated 27.05.97 partly confirming the penalty demand was totally lost sight of. The fact that I was the Managing Director of a Company was itself went out my memory. Since there was nothing left in the Company, the Tax Recovery Officer initiated proceedings against me and his inspector came in person and informed me about it. He followed it up by issue of a notice dated 22.03.2007.

7. Only when the inspector from the TRO came to me for recovery during early March 2007, I contacted a chartered Accountant by name Mr.S.Vairavanathan, Thirunelveli to guide me. He suggested that for remitting the filing fee I had to apply for a PAN card, which I did and obtained. In the meanwhile, during April 2007, again my cardiac problems became severe and I had to be hospitalised in the Sree Chitrai Thirunal Institute of Medical Sciences & Technology in Trivandrum. The appeal papers were prepared during June 2007 and submitted before the Hon'ble Tribunal on the 11 the June 2007."

4. Having heard the learned counsel for the parties, though we find that no Substantial Questions of Law arises in the present case but taking a lenient and sympathetic view of the matter in view of the aforesaid facts and circumstances, where the main person looking after the business of Appellant Company suffered serious health ailments and loss in business due to which not only the proceedings before the First Appellate Court could not be attended, but also a huge delay occurred in preferring the Appeal before the learned Tribunal, we are inclined to allow the present appeal.

5. The Revenue also failed to bring on record any material on record for rebutting the averments made in the Affidavit filed by the Assessee. Therefore, without commenting on the order passed by the learned Tribunal, we are inclined to set aside the order passed by the learned Tribunal dated 04.12.2008 and request the learned Tribunal to decide the Appeal on merits.

6.Accordingly, the order passed by the Tribunal dated 04.12.2008 is set aside and the learned Tribunal is requested to decide the Appeal on merits. Though, the delay is huge of 3599 days, it seems that since the Assessee suffered severe business losses and the main person looking after the business suffered serious ailments and he is in advance stage of age, we are inclined to request the learned Tribunal to decide the Appeal on merits in accordance with law.

7. With these observations, this Tax Case Appeal is disposed of. No order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Commissioner,
   Special Range-II,
   Madurai.

2. Commissioner of Income Tax (Appeals)
   Madurai.

3. Income Tax Appellate Tribunal,
   Chennai 'B' Bench, Chennai.

+1 cc to Mr.M.P.Senthilkumar, Advocate, S.R.No.35682

+1 cc to Mr.M.Swaminathan, Advocate, S.R.No.35476

T.C.A.No.854 of 2009

(CO)
SSM(29/05/2019)