IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal.No.353 of 2019

M/s. 3M Electro and Communication India Private Limited
Concorde Block, UB City,
No.24, Vittal Mallya Raod,
Bengaluru – 560 001. .. Appellant

Vs.

The Joint Commissioner of Income Tax,
Pondicherry Range, Pondicherry. .. Respondent

Prayer : Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal Chennai 'D' Bench, Chennai, dated 27.12.2017 in I.T.A.No.2286/Mds/2017 for the assessment year 2009-2010, against the order passed by the Commissioner of Income Tax (Appeals)-Puducherry in ITA.No.482/CIT(A)-PDY/2013-14 dated 19/06/17 against the order passed by the Joint Commissioner of Income Tax, Pondicherry Range, Pondicherry dated 26/02/13 for the Assessment year 2009-10.

For Appellant : Mr.SP.Chidambaram

For Respondent : Mr.T.R.Senthil Kumar
Senior Standing Counsel

J U D G M E N T

[Judgment of the Court was delivered by T.S.Sivagnanam, J.]

This appeal filed by the assessee under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) is directed against the order dated 27.12.2017 passed by the Income Tax Appellate Tribunal Chennai 'D' Bench in I.T.A.No.2286/Mds/2017 for the Assessment Year 2009-2010.

2. The appeal has been filed by the assessee raising the following substantial questions of law:

> "1.Whether in law, the Tribunal was right in dismissing the appeals on the ground of default due to non-appearance by the Appellant for the hearing without even adjudicating the appeal on merits?
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> 2. Whether in law, the Tribunal was right in dismissing the appeals for want of prosecution by denying natural justice to the Appellant in view of the fact that the hearing notice was not served on the Appellant?
>
> 3. Whether in law, the Tribunal was right in dismissing the appeals for want of prosecution without adjudicating the appeal on merits as stipulated under rule 24 and rule 25 of the Income Tax Appellate Tribunal Rules, 1963?"

3. We have heard Mr.S.P.Chidambaram, learned counsel appearing for the appellant/assessee and Mr.T.R.Senthil Kumarl, learned Senior Standing Counsel for the respondent/revenue.

4. The assessee filed an appeal before the Tribunal challenging the order passed by the 'Commissioner of Income Tax (Appeals), Puducherry' (hereinafter referred to as CIT(A)) dated 19.06.2017. In fact the assessee got a reasonable relief at the hands of the CIT(A). We say so because the CIT(A) had granted indulgence to the assessee to produce records to reconcile differences which were pointed out by the Assessing Officer in its order dated 26.02.2013 to justify the additions. The assessee was able to reconcile certain differences.

Consequently, the CIT(A) deducted additions to the extent of Rs.1,95,86,982/- out of the total addition of Rs.3,36,39,123/-. The assessee filed an appeal before the Tribunal. As pointed out by the learned counsel for the appellant/assessee that while filing the appeal, the address to which the notice sent to the appellant was given at Bangalore, whereas the assessee was assessed to income tax by Joint Commissioner of Income-tax, Pondicherry Range, Pondicherry. The assessee's case is that they have not received notice of hearing and they were not aware that the Tribunal has dismissed assessee's appeal for want of prosecution on 27.12.2017 and they had no knowledge of this order and only on receipt of notice under Section 271(1)(c) of the Act dated 14.08.2018, they became aware of the dismissal of their appeal and final opportunity was given to submit details before Assistant Commissioner, Puducherry Circle on 21.08.2018. Immediately thereafter, the assessee filed a Miscellaneous petition before the Tribunal to recall the earlier order dated

27.12.2017. However, the said application was dismissed on the ground that it was filed beyond the time limit specified under Section 254(2) of the Act. Hence, the appellant is before this Court by way of this appeal. As rightly pointed out by Mr.T.R.Senthil Kumar, learned senior standing counsel for respondent, that sufficient indulgence have been granted to the asssessee both by the Assessing Officer and CIT(A).

5. The CIT(A) has given the benefit to the assessee wherever they have reconciled the figures by producing details and accordingly reduced the additions. According to the assessee, they have got sufficient materials as on date to reconcile the other additions as well and plead before this Court to grant one more opportunity to the assessee to go before the authority. The explanation offered by the assessee stating that they were not aware of the order passed by the Tribunal dated 27.12.2017 is not convincing. Admittedly, the assessee's place of business is at Puducherry, they were assessed to tax and fall within the jurisdiction of Joint Commissioner of Income Tax, Puducherry. For the first time, before the Tribunal they gave a different communication address at Bangalore. The assessee states that in the same address there is another group of company and the order might have been communicated. However, the assesee has not made any endeavour to ascertain as to whether the order was served on the other sister concern.

6. Therefore, we are not convinced with the reason given by the assessee stating that they were not aware of the order passed by the Tribunal. Be that as it may, we find that the Tribunal has rejected and dismissed the appeal for want of prosecution. This could not have been done in the light of the various decisions on the point, the earliest of which was the decision of the Hon'ble Supreme Court in CIT Vs. S.Chenniappa Mudaliar reported in AIR 1969 SC 1068 which was followed in N.S. Mohan Vs. Income-tax Appellate Tribunal, Chennai reported in [2018] 94 taxmann.com 92 (Madras). Therefore, we are not to necessarily interfere with the order passed by the Tribunal dismissing the matter for want of prosecution. As observed by us earlier, the assessee was not diligent in prosecuting the matter and the reasons assigned by the assessee that they were not aware of the order passed by the Tribunal is not convincing. Nevertheless, the respondent Department would be entitled to tax the assessee only for the amount for which they are liable to be taxed and by default the excess tax cannot be recovered, which would be an action without authority of law. Therefore, we deem it appropriate to give one more opportunity to the assessee to file a reconciliation statement and for which the purpose we send back the matter to the Assessing Officer subject to certain conditions. In finally,

we were of the opinion that the assessee can be put on terms by directing them to deposit a certain sum of money with the Assessing Officer for being entitled to an opportunity to go before the Assessing Officer and place the reconciliation statement. However, Mr.S.P.Chidambaram, learned counsel for the appellant, on instructions, from his client, submitted that virtually the entire amount of tax has been recovered from the assessee, partly remitted by the assessee and partly adjusted from the refund, which was ordered. In the light of the said submission, we do not impose any condition for deposit of any sum of money.

7. In the result, the appeal filed by the assessee is allowed and the orders passed by the CIT(A) is set aside and the matter is remitted back to the Assessing Officer for fresh consideration, who shall give an opportunity to the assessee to file reconciliation statement. On considering the reconciliation statement and after affording an opportunity of personal hearing to the assessee, the Assessing Officer is directed to pass orders on merits. Accordingly, Tax Case Appeal is allowed on the above terms and the substantial questions of law are left open. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Joint Commissioner of Income Tax,
Pondicherry Range, Pondicherry.

2.The Income Tax Appellate Tribunal,
“D” Bench, Chennai.

3.The Commissioner of Income Tax (Appeals)
Puducherry.

+1cc to Mr.T.R.Senthil Kumar, Advocate sr.55269

Tax Case Appeal.No.353 of 2019

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nr 22/08/2019