IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2019

CORAM:

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

Writ Appeal No.1570 of 2018
and C.M.P.No.12644 of 2018

1.The Central Board of direct Taxes
Rep. by its Chairperson
Room No.143 E, North Block
Department of Revenue (CBDT)
Ministry of Finance
Government of India, New Delhi.

2.The Deputy Commissioner of Income Tax
Corporate Circle 5 (1)
121, Nungambakkam High Road
Chennai - 600 034. ... Appellants

-vs-

M/s.REGEN Powertech Private Ltd.,
Rep. by its Joint Managing Director,
R.Sundaresh
No.2, Harrington Road,
7th Floor, KRM Plaza, North Tower,
Chetpet, Chennai - 600 031. ... Respondent

Prayer: Writ Appeal filed under Clause 15 of Letter Patent against the order dated 28.03.2018 passed in Writ Petition No.24273 of 2016.

Prayer in W.P.No.24273 of 2016 : Petition filed under Article 226 of the constitution of India praying to issue a writ of certiorarified mandamus and Quash the impugned order in F.No. 225/121/2015/ITA.II dated 01.06.2016 issued by the first respondent and consequently direct the first respondent to accept the Return of Income filed by the petitioner Company for the assessment year 2014-15 u/s 139 (1) of the Act.

For Appellants : Mrs.Hema Muralikrishnan

For Respondent : Mr.R.Sivaraman

J U D G M E N T

[Judgment of the Court was made by T.S.SIVAGNANAM, J]

This appeal by the Revenue is directed against the order passed in W.P.No.24273 of 2016 dated 28.03.2018.

2. The respondent filed the said writ petition challenging the order passed by the first appellant dated 01.06.2016 refusing to condone the delay of 37 days in filing the Return of Income for the Assessment Year 2014-15. The respondent also sought for a further direction upon the appellants to accept Return of Income filed by them for the Assessment Year 2014-15 under Section 139(1) of the Income Tax Act, 1961 (for short the "Act"). The learned single Bench by the impugned order allowed the writ petition and set aside the order passed by the first appellant dated 01.06.2016. The Revenue is on appeal before us questioning the correctness of the impugned order.

3. We have heard Mrs.Hema Muralikrishnan, learned Senior Standing Counsel for the Revenue and Mr.R.Sivaraman, learned counsel for the respondent/writ petitioner.

4. The first appellant while rejecting the request of the respondent for condonation of delay of 37 days in filing the return held that the respondent should have accepted the Tax Audit Report as prepared by the auditors initially appointed by them and without doing so, it could not have appointed a new auditor and submit the Tax Report on 29.12.2014 and the delay due to difference of opinion between the auditor and the auditee cannot be accepted as a valid ground for the first appellant to invoke its power under Section 119 of the Act.

5. Section 119 of the Act deals with the instructions to subordinate authorities. Clause (b) of sub-section (2) to Section 119 of the Act would be relevant to for the purpose of this appeal, which reads as follows:-

> "(b) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, authorise any income-tax authority, not being a Commissioner (Appeals) to admit an application or claim for any exemption, deduction, refund or any other relief under this Act after the expiry of the period specified by or under this Act for making such application or claim and deal with the same on merits in accordance with law."

6. Thus, to exercise the above power, the Board has to consider whether it would be desirable or expedient to do so to avoid genuine hardship in the case of an assessee. The respondent/assessee's case is that the auditors appointed by them initially were delaying the process of audit completion without proper reasons inspite of providing expert valuation report from other professional firm to satisfy their concerns. Thus, the respondent having left with no other alternative had to appoint another auditor, for which purpose, a No Objection Certificate was required to be obtained from the erstwhile auditor.

7. The Writ Court after considering the factual position as well as the decisions relied on either side held that the respondent cannot appoint a new auditor without getting a No Objection Certificate from the existing auditor and therefore, the respondent after getting No Objection Certificate from the erstwhile auditor had uploaded the Return of Income along with the Tax Audit Report on 07.01.2015 and by then, there was a delay of 37 days. Further, the learned Writ Court rightly pointed out that by the delayed submission of Return of Income, the respondent does not stand to benefit in any manner whatsoever. Thus, the learned Writ Court was satisfied that the explanation given by the respondent was sufficient for condonation of delay of 37 days in filing the Return of Income and such a delay should not defeat the claim of the respondent.

8. We have also seen the reasons assigned by the respondent for belatedly filing the return. As rightly pointed out by the learned Writ Court, no assessee would stand to benefit by filing the return belatedly. Unless the appellants have reason to believe that the assessee had wantonly and purposely filed the return belatedly for certain malafide reasons, the delay in filing the return under normal circumstances should be condoned. It is true that the Board has power to exercise its discretion. However, exercise of such discretion should be in terms of Section 119(2)(b) of the Act. While exercising the power, the Board should bear in mind the genuine hardship faced by the assessee. More importantly, the hardship faced by the assessee for making an application or claim any exemption deduction or refund or any other relief under the provisions of the Act has to be the basis for taking a decision as to whether the delay has to be condoned or not.

9. Thus, in our considered view, the learned Writ Court on facts, rightly held that the delay of 37 days in filing the Return of Income along with the Audit Report is condonable. The observations made by the first appellant in the order dated 01.06.2016 largely pertained to the respondent's eligibility to

carry forward the loss claimed by them in the return of income. Further, the first appellant in the order dated 01.06.2016 has made an observation that if the reasons given by the assessee is accepted as a valid ground it may encourage other tax payers to follow suit. The appellants need not have any apprehension in that regard because exercise of discretion for the purpose of condonation of delay can be only based on the facts and circumstances of each case and therefore, there can be no set precedent on such issues.

10. The learned single Bench was satisfied with the reasons assigned by the assessee while seeking for condonation of delay and the same, in our considered opinion, is just and proper. We find that the appellants have not made out any ground to interfere with the order passed in the writ petition. Accordingly, the appeal filed by the Revenue is dismissed and the delay of 37 days in filing the Return of Income along with Audit Report is condoned and the second appellant is directed to process the return in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

Svki

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+1cc to M/s.R.Sivaraman, Advocate SR.No.1105

+1cc to M/s.Hemamuralikrishnan, Advocate SR.No.172

W.A.No.1570 of 2018

CP(CO)
GMY(30/01/2019)