In the High Court of Judicature at Madras

Dated : 19.8.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal Nos.607 & 608 of 2019 & CMP.No.17652 of 2019

The Government Telecommunication
Employees Cooperative Society Ltd.,
Chennai-1 ...Appellant/Appellant in both

Vs

The Income Tax Officer, Non
Corporate Ward 12(3), Chennai-34....Respondent/Respondent in both

APPEALS under Section 260-A of the Income Tax Act, 1961, against the common order of the Income Tax Appellate Tribunal Chennai 'A' Bench, Chennai dated 15.3.2017 in I.T.A.Nos.2898 and 2899/Mds/2016 respectively for the assessment years 2012-13 and 2013-14 against the order passed by the Commissioner of Income Tax (Appeals)-13 Chennai-34 made in ITA.No.21/CIT(A)-13/AY2012-2013 & ITA.No.108/CIT(A)-13/Ay-2013-2015 dated 04.08.2016 against the assessement order passed by the Income Tax Officer, Non-Corporate ward 12(3) (Erstwhile Business ward IX(3) Chennai-6 made in PAN.AABAT3072B dated 20.03.2015 for the assessment year 2012-13 and 2013-2014.

For Appellant : Mr. A.S.Sriraman
For Respondent: Mrs.V.Pushpa, Standing Counsel for IT Department

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COMMON JUDGMENT

(Judgment was delivered by T.S.Sivagnanam,J)

These appeals, filed by the assessee under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') are directed against the common order dated 15.3.2017 in I.T.A.Nos.2898 and 2899/ Mds/2016 respectively for the assessment years 2012-13 and 2013-14.

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2. The assessee filed these appeals on the following substantial questions of law:

> "i. Whether, under the facts and circumstances of the case, the Income Tax Appellate Tribunal was justified in dismissing the appeal in limine without going into the merits of the case ? And
>
> ii. Whether the Income Tax Appellate Tribunal was justified in exercising the power given under Section 254 of the Income Tax Act, 1961 in dismissing the appeal in limine without appreciating the scope of the aforesaid provisions that the same should be disposed of on merits ?"

3. We have heard Mr.A.S.Sriraman, learned counsel for the appellant and Mrs.V.Pushpa, learned Standing Counsel accepting notice for the respondent - Revenue.

4. The Tribunal, by the impugned common order dated 15.3.2017, dismissed the appeals filed by the assessee on the ground that none appeared on behalf of the assessee when the matters were called on that day. In doing so, the Tribunal relied upon the decision of the Delhi Bench in the case of CIT Vs. Multiplan India P. Ltd. [reported in 38 ITD 320] and the decision of the High Court of Madhya Pradesh in the case of late Tukojirao Holker Vs. Wealth Tax Commissioner [reported in 223 ITR 480].

5. Thereafter, the assessee filed two miscellaneous petitions for restoring the appeals and in the said petitions, the assessee stated that the assessee's authorized representative was seated in the wrong Bench and consequently, when the cases were called, none appeared for the appellant - assessee. Though such a plea was raised by the assessee by filing miscellaneous petitions, the Tribunal dismissed the same by a common order dated 21.12.2018 on the ground that they were time barred i.e. they were filed beyond the period of six months from the end of the month, on which, the common order was passed by the Tribunal.

6. The correctness of the decision of the Tribunal in dismissing the appeals for non prosecution is no longer res integra and has been decided in several cases by this Court following the decision of the Hon'ble Supreme Court in the case

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of CIT Vs. S.Chenniappa Mudaliar [reported in (1969) 74 ITR 41]. We had an occasion to consider the same issue in the decision in the case of M/s.3M Electro and Communication India Pvt. Ltd. Vs. JCIT, Pondicherry [TCA.Nos.353 of 2019 dated 02.7.2019] wherein we have held in paragraph 6 as follows :

> "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

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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. The other decisions are

(i) by the Hon'ble First Bench of this Court in the case of N.S.Mohan Vs. ITAT, Chennai [reported in (2018) 94 taxmann.com 92 (Madras)];

(ii) by a Division Bench of this Court in the case of Smt. Ritha Sabapathy Vs. DCIT [TCA. No.169 of 2019 dated 19.2.2019]; and

(iii) by a Division Bench of the Gujarat High Court in the case of Sanket Estate & Finance (P) Ltd. Vs. CIT [reported in (2013) 32 Taxmann. Com 342] wherein of the decision in the case of Multiplan India (P) Ltd., was taken note of and it was held that the reliance on the decision of the Tribunal in the case of Multiplan India (P) Ltd., was erroneous, the operative portions of which read as follows :

'24. When the Supreme Court decided the case of S.Chenniappa Mudaliar (supra), no amendment in rule in the Income Tax Appellate Tribunal Rules was made as yet. Rule 24 of the Income Tax Rules, 1963 makes it abundantly clear that the Tribunal cannot dismiss the appeal without adverting to the merits. Even on the day, on which, the hearing is adjourned, the appellant chose not to appear in person or through an authorized representative. It is incumbent upon the Tribunal to dispose of the appeal on merits after hearing the respondent and afterwards if the appellant appears and satisfies the Tribunal, sufficient cause for its non appearance on the date of hearing, the Tribunal can set aside the ex parte order and restore the appeal. However, reliance of the Tribunal on the decision of the Delhi Bench in the case of Multiplan India (P) Ltd. (supra) is erroneous and therefore, requires to be set aside. In the

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instant case, it can be noted from the letters addressed by the present appellant to the Tribunal that it was awaiting transfer of both the appeals of 1998-99 and 1999-2000 since CIT (Appeals) had relied upon such orders of earlier years.

25. If the record of these appeals were necessary for proceedings with the appeals, which were pending of the year 2001-02, 2002-03, in the instant case, it was a matter of transfer from Mumbai Bench to the Ahmedabad Bench of these appeals and the present appellant has made out sufficient cause indicating from the material placed on record that it had never abandoned the cause. On the contrary, it had consistently pursued the matters as it was having a direct bearing on the appeals of subsequent years. Even otherwise, what is the requirement of the law is of adjudication on merit even when either side or both the sides choose not to contest. In view of the aforesaid, we are of the considered view that the Tribunal erred in dismissing the appeal only on the ground of non prosecution without adverting to the merits of the matter and therefore, we set aside the order impugned dated 04.8.2006 passed by the Tribunal and also remand the matter to the Tribunal to adjudicate the same on merits. Appeal is allowed accordingly.'

8. Yet another decision on the same point is the decision of a Division Bench of the Rajasthan High Court in the case of Tribhuvan Kumar Vs. CIT [reported in (2007) 294 ITR 401], in which, the substantial question of law itself as to whether the decision of the Delhi Bench of the Tribunal in the case of Multiplan India (P) Ltd., could have been applied to the facts of that case was decided in favour of the assessee. In the light of the above, the order impugned in this appeal has to be necessarily set aside and the substantial questions of law are to be answered in favour of the assessee.

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9. In the result, the above tax case appeals are allowed, the impugned common order dated 15.3.2017 and also the common order 21.12.2018 are set aside and the appeals in I.T.A.Nos.2898 and 2899/Mds/2016 are restored to the file of the Tribunal for a decision on merits. The substantial questions of law are answered

in favour of the assessee. No costs. Consequently, the connected CMP is closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

To
1.The Income Tax Appellate Tribunal, Chennai 'A' Bench.
2.The Income Tax Officer, Non Corporate Ward 12(3), Chennai-34.

3.The Commissioner of Income Tax(Appeals)13
Chennai-34

+1 cc to Mr.M.Swaminathan & V.Pushpa Advocate sr70410
+1 cc to Mr.S.Sridhar Advocate sr70086

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