IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.09.2019

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THE HONOURNABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.3980 of 2018
and
W.M.P.No.4891 of 2018

M/s. Aadil Ashfaque & Co.Pvt.Ltd.
rep. by its Director,
V.Aadil Ahmed,
Flat No.A-26, 1st Floor,
Ram Square, Village Road,
Nungambakkam,
Chennai - 600 034. ...Petitioner

Vs.

1. Principal Commissioner of Income Tax,
Chennai-I, Chennai,
Room No.702, 7th Floor, New Block,
121, Mahatma Gandhi Road,
Chennai - 34.

2. Deputy Commissioner of Income Tax,
Corporate Circle-I (1),
Chennai. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records in C.No.217/6/Pr.CIT-1/2015-16 dated 20.03.2017 and quash the same and direct the 1st respondent to adjudicate the revision petition on merits of the case.

For Petitioner : Mr.G.Ashokapathy
for M/s.Pass Associates

For Respondents : Mrs.Hema Muralikrishnan,
Senior Standing Counsel

O R D E R

The petitioner is aggrieved against the order of the first respondent dated 20.03.2017 in rejecting the application filed by the petitioner under Section 264 of the Income Tax Act, 1961, on the ground that the same was filed beyond the time stipulated under section 264. The first respondent found that the said application was filed nearly after seven years from the date of intimation under section 143(1) dated 20.10.2008 and no specific petition indicating reasons for delay and seeking condonation of delay has been filed along with section 264 petition.

2. Heard both sides.

3. The case of the petitioner in short is as follows:

For the assessment year 2007-08, the petitioner filed e-return on 29.10.2007. The petitioner earned gross total income and total income of Rs.56,91,233/- and however, due to inadvertence and by mistake committed by the employee of the petitioner Company, both the gross total income and total income were shown as Rs.2,74,47,877/-, instead of 56,91,233/-. Therefore, the petitioner filed its revised return on 26.07.2010 altering only the figures in gross total income and total income without making any changes with respect to the other columns and with income computation. While so, after five years of filing the revised return, the petitioner company received a communication dated 07.08.2015 stating that there is outstanding of tax demand for the assessment year 2007-08 to Rs.87,26,080/-. The petitioner was not aware of the intimation issued under section 143(1) till it was received by them on 23.09.2015. Therefore, the petitioner approached the first respondent and filed an application under Section 264 on 06.10.2015. The same was rejected by the impugned order on the reason it was filed beyond the period of limitation.

4. A counter affidavit is filed by the respondents wherein it is stated as follows:

The intimation under Section 143(1) was passed on 20.10.2008 and the information regarding the outstanding demand was uploaded as early as 2008 and was available on the e-filing portal of the petitioner. Therefore, the contention of the petitioner as if no intimation was served or received by the petitioner under section 143(1) is wrong. The petitioner filed revised return on 26.07.2010 on becoming aware of the intimation raising the demand. The date of knowledge for the purpose of application under Section 264 is not 23.09.2015 as contended by the petitioner. The application under section 264 was rejected after considering the merits of the facts and circumstances.

5. Learned counsel for the petitioner reiterated the contentions raised in the affidavit filed in support of the writ petition and submitted that a bonafide mistake is sought to be rectified only in respect of the figure shown as gross total income in the relevant columns and the authorities ought to have considered the same and decided the matter on merits after perusing the entire records. Therefore, he contended that the rejection of the application on the technical ground of limitation would result in undue hardship to the petitioner since he is called upon to pay the tax in respect of the income over and above the actual gross income, as shown by the petitioner in their revised return.

6. On the other hand, the learned senior standing counsel for the respondents submitted that the petitioner has not chosen to take steps to rectify the mistake within the time, even assuming there is a mistake and therefore, the 1st respondent has rightly rejected the application as a time barred one.

7. Upon hearing the learned counsels for the respective parties and perusing the materials placed before this Court, it is evident that the petitioner claims that gross total income shown in the original return filed on 29.10.2007 as Rs.2,74,47,877/- is a factual mistake and on the other hand, it is only a sum of Rs.56,91,233/- as the sum to be reflected as gross total income in all the places. In order to rectify such mistake, it is seen that the petitioner has filed a revised return on 26.07.2010. By that time, it seems that the intimation under section 143 (1) raising the demand was issued on 20.10.2008 itself. According to the petitioner, they are not aware of such intimation. On the other hand, it is contended by the revenue that such intimation was readily available in the e-filing portal of the petitioner. No doubt, the petitioner has approached the first respondent and filed application under section 264 to set right the dispute. However, the fact remains that such application was filed on 06.10.2015 with delay. The first respondent has specifically pointed out that the petitioner has not filed any application to condone the delay specifically indicating the reasons for such delay. It is also seen that the first respondent has chosen to reject the application only on the ground that it was filed belatedly. Therefore, this Court is of the view that ends of justice would be met if the matter is remitted back to the first respondent for reconsidering the matter afresh if the petitioner is in a position to satisfy the first respondent that the delay in filing such application under section 264 was neither willful or intentional.

8. Accordingly, without expressing any view on the merits of the claim made by the respective parties, this Writ Petition is disposed of as follows:

a) The order of the first respondent impugned in this writ petition is set aside and the application filed under section 264 dated 06.10.2015 is restored to file.

b) The petitioner is directed to file an application for condonation of delay before the first respondent explaining all the reasons for such delay. Such application shall be filed within a period of two weeks from the date of receipt of a copy of this order.

(c) On receipt of such application, the first respondent shall consider the delay application and thereafter pass an order on the same on merits and in accordance with law. If the first respondent is satisfied with the reasons, he shall go into the merits of Section 264 application and pass fresh orders on merits and in accordance with law on such application. The whole exercise shall be completed by the first respondent within a period of six weeks from the date of receipt of the application filed by the petitioner seeking to condone the delay.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vsi

To

1. The Principal Commissioner of Income Tax,
Chennai-I, Chennai,
Room No.702, 7th Floor, New Block,
121, Mahatma Gandhi Road,
Chennai - 34.

2. The Deputy Commissioner of Income Tax,
Corporate Circle-I (1),
Chennai.

+1cc to M/s.Hema Muralikrishnan , Advocate SR.No. 81852

W.P.No.3980 of 2018

A.SK(23/10/2019)