IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.4.2019

CORAM

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

Tax Case Appeal No.660 of 2018
and
C.M.P.No.13038 of 2018

K.S.Sridhar
Appellant/Petitioner

Vs.

1. The Income Tax Officer,
   Salary Ward-VI(2), Chennai.

2. The Income Tax Appellate Tribunal,
   "SMC", C-Branch,
   Rajaji Bhavan, Besant Nagar,
   Chennai 600 090.

Respondents/Respondents

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' (SMC) Bench, Chennai, dated 20.4.2018 made in M.P.No.20/CHNY/2018 in ITA No.3249/Mds/2016 against the order of the Commissioner of Income Tax (Appeals)15, 121, Mahathma Gandhi Road, Nungambakka, Chennai 600 034 GIR No./PAN AMFPS0388A dated 25.04.2016 Assessment year 2007-2008 and against Income Tax officer, Salary Ward VI(2) Chennai PAN-GIR No.AMFPS0388A Assessment year 2007-2008.

For Appellant : Ms.Kothai Muthu Meenal
for M/s. Waraon & Sairams

For Respondents: Mr.T.R.Senthilkumar
Senior Standing Counsel assisted by
Ms.K.G.Usharani

J U D G M E N T
(Delivered by DR.VINEET KOTHARI,J)

The Assessee K.S.Sridhar, an individual, who was working as General Manager in a Private Company viz., M/s.Vibgyor

Automotive Private Limited, Chennai, has filed this Tax Case (Appeal) under Section 260-A of the Income Tax Act, aggrieved by the order passed by the learned Income Tax Appellate Tribunal dated 20.4.2018, dismissing the petition filed by him praying to review the order passed by the Tribunal on 5.12.2017, rejecting the Appeal filed by the Assessee as barred by limitation which was filed after a delay of 145 days. The reasons assigned by the Assessee for the delay viz., Medical Ailments of the Assessee were not found to be sufficient by the learned Tribunal as they were not supported by the Doctor's Certificate and the admission certificate produced was only for three days.

2. The relevant portion of the order passed by the Tribunal dated 5.12.2017 is quoted below for ready reference:-

> "4. In the present case, the assessee justified the delay only with reference to the Affidavit by the assessee stating that the assessee was suffering from Hypertension, Rhemotoid Arthritis and other problems and he was admitted in Vijaya Hospital on 3.3.2016 and discharged on 5.3.2016 as per Vijay Medical & Educational Trust's discharge summary (at page 41 of file) baring IP No.2347/2016, Bed No.309, dated Nil. This reason advanced by the assessee is not supported by Doctors' Certificate and the admission certificate was only 3 days i.e., from 3.3.2016 to 5.3.2016. Therefore, I am of the opinion that this kind of delay does not warrant condonation, since the assessee has not shown any valid proof for undergoing treatment on the advice of doctor in filing the appeal belatedly 145 days. Accordingly, the appeal filed by the assessee stands dismissed as un-admitted."

3. The learned counsel appearing for the Revenue however, supported the impugned order.

4. Having heard the learned counsel appearing for the parties and upon perusal of the reasons stated in the impugned order, we are satisfied that the learned Tribunal could have taken sympathetic view of the matter and decided the Appeal proceedings on merits. There was a delay of 8 days in filing the Appeal before the Commissioner of Income (Tax) and 145 days in filing the Appeal before the Tribunal. Both the Appellate Forums have failed to consider the case of the Assessee on merits and decide his Appeal with regard to the Cash Credit entries of which disallowance was made by the Assessing Authority.

5. The learned counsel for the Assessee submitted before us that as against the demand of Rs.7,27,210/-, a substantial amount viz., Rs.4,75,000/- stands paid by the Assessee during the period from May 2010 to June 2018 as per the details furnished in the Memorandum of Appeal filed by the Assessee and even after filing of the present Appeal, further payments have been made and in total, around Rs.7,00,000 has been paid.

6. Therefore, we are of the opinion that the matter deserves to be remitted back to the Tribunal for deciding the Appeal on merits. Accordingly, we condone the delay in filing the said Appeal and we request the learned Tribunal to decide the Appeal on merits and in accordance with law within a period of 6 months from today, after providing a reasonable opportunity of hearing to the Assessee. The Assessee shall appear before the Tribunal in the first instance on 15.5.2019. The Tax Case Appeal is disposed of accordingly. No costs. The connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

ssk.

1. The Income Tax Officer,
   Salary Ward-VI(2), Chennai.

2. The Income Tax Appellate Tribunal,
   "SMC", C-Branch,
   Rajaji Bhavan, Besant Nagar,
   Chennai 600 090.

3. The Commissioner of Income Tax
   (Appeals)15
   121, Mahathma Gandhi Road
   Chennai 34.

4. The Income Tax officer
   Salary Ward VI(2) Chennai.

+2 Ccs to Waraon & Sairams, sr 38072.
+1 CC to Mr.T.R.Senthilkumar, Advocate sr 38779.

TCA No.660 of 2018

JP(CO)
SP(07/05/2019)