In the High Court of Judicature at Madras

Dated : 30.8.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal Nos.921 to 929, 945, 957 & 960 to 966 of 2018

1.The Principal Commissioner of
Income Tax Central Circle II
Central Circle II,
No.108 Mahatma Gandhi Road, Chennai-34.
...Appellant/Respondent

Vs.

A.Geetha	Respondent in TCA No.921/2018
Mr.V.Damotharan(HUF)	Respondent in TCA No.922/2018
V.Ramesh(HUF)	Respondent in TCA No.923/2018
G.Prasanna	Respondent in TCA No.924/2018
S.Ashok Kumar	Respondent in TCA No.925&926/2018
S.Kamala	Respondent in TCA No.927/2018
H.Pradeepa	Respondent in TCA No.928/2018
V.Damodharan	Respondent in TCA No.929/2018
G.Ananthi	Respondent in TCA No.945/2018
V.Harikrishnan	Respondent in TCA No.957&960/2018
S.Ganapathy	Respondent in TCA No.961/2018
G.Prasanna	Respondent in TCA No.962/2018
N.Vishwanathan	Respondent in TCA No.963/2018
P.Saranya	Respondent in TCA No.964/2018
V.Ramesh	Respondent in TCA No.965/2018
R.Maheswari	Respondent in TCA No.966/2018

Prayer in All Appeals:

Appeal under section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellant Tribunal Madras B Bench Dated 17th May 2018 in ITA No.2452/Chny/2016 in TCA No.921 of 2018, ITA No.2386/Chny/2016 in TCA No.922 of 2018, ITA No.2388/Chny/2016 in TCA No.923 of 2018, ITA No.2387/2016 in TCA No.924 of 2018, ITA No.2450/Chny/2016 in TCA No.925 of 2018, TCA No.2451/Chny/2016 in TCA.No.926 of 2018, ITA No.2393/Chny/2016 in TCA No.927 of 2018, ITA No.2392/Chny/2016 in TCA No.928 of

2018, ITA No.2394/chny/2016 in TCA No.929 of 2019 ITA No.2390/chny/2016 in TCA No.945/18, ITA No.2391/chny/2016 in TCA,No.957 of 2018 and ITA.No.2389/chny/2016 in TCA No.960 of 2018, in ITA No.2400/chny/2016 in TCA No.961 of 2018, ITA No.2401/chny/2016 in TCA.No.962 of 2018, iTA No.2399/chny/2016 in TCA. No.963/2019, ITA No.2396/chny/2016 in TCA No.964 of 2019, ITA No.2398/chny/2016 in TCA No.965 of 2019, ITA No.2395/chny/2016 in TCA No.966 of 2018 as against the proceedings of the Deputy Commissioner of Income Tax, Central Circle 2 Trichy in PAN aarpg6947R/AMN/Cen.cir.2/TRY dated 11.02.2015, as against the proceedings of the Commissioner of Income Tax, Central-II, Chennai in No.2744/C-II/2014-15/2 for the Assessment 2012-2013 dated 14.11.2014, as against the Reassessment Order of the Assistant Commissioner of Income Tax, Central Circle II, Tiruchirapalli, made u/s 143(3) r/w/s 147 for the Assessment 2012-2013 dated 15.04.2014.

For Appellant : Mr.T.R.Senthilkumar, SSC
assisted by Ms.K.G.Usharani, SC

For Respondents: Mr.C.Deepak

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

We have heard Mr.T.R.Senthilkumar, learned Senior Standing Counsel assisted by Ms.K.G.Usharani, learned Standing Counsel for the appellant - Revenue and Mr.C.Deepak, learned counsel for the respondents - assessees.

2. These appeals, filed by the Revenue under Section 260A of the Income Tax Act, 1961 (for short, the Act) are directed against the common order dated 17.5.2018 passed by the Income Tax Appellate Tribunal, Chennai 'B' Bench (for brevity, the Tribunal) for the assessment year 2012-13.

3. The appeals were admitted on 20.12.2018 on the following substantial questions of law :

> "i. Whether on the facts and in the circumstances of the case, the ITAT was legally justified in condoning the inordinate delay of 570 days on the part of the assessee in filing the appeals, without recording reasons for such condonation?
>
> ii. Whether the Appellate Tribunal was right in law in not appreciating the decision of the Hon'ble Supreme Court

wherein, it was held that condonation of delay is an exception and that proper explanation is a sine qua non for condoning the delay ?

iii. Whether the ITAT was correct in not taking cognizance of the Hon'ble Supreme Court's decision in the case of MAK Data (P) Ltd. Vs. CIT [358 ITR 593], which warranted levy of penalty under Section 271(1)(c)? and

iv. Whether, on the facts and in the circumstances of the case, the Tribunal was right in not considering the ratio laid down by the jurisdictional Madras High Court in the case of Khandelwal Steel & Tube Traders Vs. ITO [95 Taxmann.com 15] and Ravi & Co. Vs. ACIT [271 ITR 286], which apply to the facts of the instant case on all fours?"

4. Since identical substantial questions of law were framed for consideration, we have heard the matters together.

5. Mr.T.R.Senthilkumar, learned Senior Standing Counsel for the appellant – Revenue has vehemently contended that the Tribunal erred in condoning the inordinate delay of 570 days in filing the appeals before the Tribunal and that too, without assigning any reasons. According to him, in this regard, the Tribunal ignored the settled legal position with regard to the manner, in which, Courts and Tribunals should consider the cases where there has been inordinate delay in approaching them. Therefore, it is contended that the Tribunal ought to have dismissed the appeals on the ground that they were hopelessly barred by delay and laches. This submission is made for substantial question of law Nos.1 and 2 raised by the Revenue.

6. With regard to substantial question of law Nos.3 and 4 pertaining to levy of penalty, it is submitted by the learned Senior Standing Counsel appearing for the Revenue that the Assessing Officer, in the re-assessment proceedings, did not even levy penalty without taking note of the factual position and the background, in which, the gold jewels were recovered and that it is a clear case where levy of penalty is warranted under Section 271(1)(c) of the Act. It is further submitted that considering the facts, the Commissioner of Income Tax, Central II, Chennai initiated proceedings under Section 263 of the Act and levied penalty. However, the Tribunal erroneously reversed the same.

7. We have heard the learned counsel for the respondents on the above submissions made by the learned Senior Standing Counsel appearing for the Revenue.

8. The settled legal principle is that law of limitation is founded on the principles of public policy and is not intended to defeat the rights of the parties. The period of delay is not the sole criterion for Courts and Tribunals to consider as to whether they should exercise discretion in condoning the delay. Even a meager delay, if found to be for mala fide reasons, would be sufficient to throw the appeal by Courts or Tribunals. In cases where enormous delay is involved, if there is sufficient cause, Courts and Tribunals normally adopt a liberal approach.

9. The Revenue cannot dispute before us that many a time, the Revenue itself approaches Courts and Tribunals by way of appeals, which are filed well beyond the period of limitation. However, Courts adopt a liberal approach since Courts do not want the matters to be thrown out on technical grounds. The Revenue has not pointed out that on account of certain mala fide reasons, the respondents - assessees purposely filed the appeals belatedly. In the absence of any allegation as regards the bona fides of the respondents - assessees, we are of the view that a liberal approach should be adopted.

10. No doubt, Mr.T.R.Senthilkumar, learned Senior Standing Counsel is right in submitting that the Tribunal did not give any reasons. The Tribunal, while exercising its discretion, ought to have assigned reason, however brief it may be. Nevertheless, the Tribunal, having condoned the delay, had taken up the matters on merits and considering the fact that the respondents are all individual assessees, we do not propose to interfere with the common order passed by the Tribunal. For the above reasons, substantial question of law Nos.1 and 2 are answered against the Revenue.

11. With regard to substantial question of law Nos.3 and 4, the issue is as to whether the power under Section 263 of the Act could be invoked by the Commissioner of Income Tax well beyond the period of limitation. An identical issue came up for consideration before us in the case of PCIT, Central 2, Chennai-34 Vs. Shri.R.P.Dharmalingam [TCA.No.420 of 2019 dated 31.7.2019] wherein we dismissed the appeal filed by the Revenue.

12. At this juncture, it would be beneficial to refer to the decision of a Division Bench of this Court in the case of CIT vs C.R.K.Swamy [reported in (2002) 254 ITR 158] wherein this Court held that non initiation of penalty proceedings under Section

271(1)(c) of the Act would not render the assessment erroneous or prejudicial to the interests of the Revenue and that the Commissioner was not justified in invoking the provisions of Section 263 of the Act. The operative portions of the judgment in the case of C.R.K. Swamy read as follows :

> "2. Moreover, as held by a Bench of the Delhi High Court in the case of Addl. CIT v. Sudershan Talkies [1993] 200 ITR 153, failure on the part of the assessing authority to initiate penalty proceedings would not give jurisdiction to the Commissioner of Income-tax to pass an order under Section 263 of the Income-tax Act, 1961 and to direct initiation of such proceedings. We are in respectful agreement with that view.
>
> 3. The question referred to us for the assessment year 1984-85, as to whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in setting aside the order passed under Section 263 of the Income-tax Act and holding that non-initiation of penalty proceedings under Section 271(1)(c) do not render the assessment made dated January 16, 1989, erroneous or prejudicial to the interests of the Revenue and consequently the Commissioner of Income-tax is not justified in assuming under Section 263, is therefore answered in favour of the assessee and against the Revenue."

13. In the light of the above, the Revenue has not made out any ground to interfere with the common order passed by the Tribunal. Hence, substantial question of law Nos.3 and 4 are answered against the Revenue.

14. In the result, the above tax case appeals are dismissed and the substantial questions of law are answered against the Revenue. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

RS

To

1.The Income Tax Appellate Tribunal,
   Chennai 'B' Bench.

2.The Deputy Commissioner of Income Tax,
   Central Circle-2 Trichy.

3.The Commissioner of Income Tax,
   Central II, Chennai.

4.The Assistant Commissioner of Income Tax,
   Central Circle II, Tirchirapalli.

+18ccs to M/s.Deepak and T.Dharani, Advocate SR.75860 to 75877
+1cc to Mr.T.R.Senthilkumar, Advocate SR.75996

TCA.Nos.921 to 929, 945, 957
& 960 to 966 of 2018

PPA(CO)
CB(03/02/2020)