IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1210 OF 2017

Procter and Gamble Hygiene and Healthcare Limited .. Appellant

v/s.

Commissioner of Income Tax - 8 .. Respondent

Mr. Farokh Irani a/w. Ms. Rupali Vasaikar i/b. Rajesh Shah & Co. for the Appellant.

Mr. Tejveer Singh for the Respondent.

CORAM: UJJAL BHUYAN, &
MILIND N. JADHAV, JJ.

DATE : FEBRUARY 4, 2020

P. C:-

1. Heard Mr. Irani, learned counsel for the appellant and Mr. Tejveer Singh, learned standing counsel, revenue for the respondent.

2. This appeal has been filed under Section 260A of the Income Tax Act, 1961 (**"the Act"** for short) against the order dated 30.11.2016 passed by the Income Tax Appellate Tribunal,

"H" Bench, Mumbai (**"Tribunal"** for short) in ITA No. 4866/Mum/2015 for the Assessment Year 2008-09.

3. The appeal has been preferred projecting the following questions as substantial questions of law :

"(1) Whether the Tribunal was correct, in the facts of the case and in law, in rejecting the appeal of the appellant by not condoning the delay ?

(2) Whether the order dated 30th November, 2016 passed by the Tribunal is perverse as the same is passed without appreciating the materials filed before it in right perspective ?"

3.1. From the above, it is evident that the issue involved in this appeal is non-condonation of delay in filing of the related appeal under Section 254 of the Act by the appellant before the Tribunal.

4. Before adverting to the impugned order passed by the Tribunal, relevant facts are briefly stated as under :

4.1. For the Assessment Year under consideration, Assessing Officer passed the assessment order on 01.02.2012. In the said assessment order certain deductions were allowed under Section 80IC of the Act.

4.2. The jurisdictional administrative Commissioner i.e. Commissioner of Income Tax -8, Mumbai was of the view that the Assessing Officer had wrongly allowed deduction under Section 80IC of the Act. He was of the further view that the assessment order so made was erroneous and prejudicial to the interest of the revenue. Accordingly, he invoked jurisdiction under Section 263 of the Act and vide order dated 31.03.2014 set aside the assessment order by directing the Assessing Officer to pass fresh assessment order by taxing the interest income earned by the petitioner on the amount covered by the deduction sought for under Section 80IC, under the head "income from other sources".

4.3. It is stated that following the order passed by the jurisdictional administrative Commissioner under Section 263 of the Act, the Assessing Officer passed the consequential assessment order dated 09.06.2014. Against the assessment order dated 09.06.2014, petitioner preferred appeal before the Commissioner of Income Tax (Appeals)-17, Mumbai i.e. the first appellate authority. However, by the appellate order dated 28.08.2015, the first appellate authority dismissed the appeal of the petitioner. Aggrieved thereby petitioner preferred appeal before the Tribunal which was registered as ITA No. 5096/Mum/2015. In the meanwhile, petitioner having realised that the order passed by the jurisdictional administrative Commissioner under Section 263 of the Act had remained unchallenged, belatedly filed appeal before the Tribunal which was registered as ITA No. 4866/Mum/2015. In the process there was delay of 450 days.

4.4. Petitioner filed an application before the Tribunal for condonation of delay in filing ITA No. 4866/Mum/2015 and in support thereof also filed an affidavit dated 12.09.2016 explaining the delay. Both the appeals were heard together and by the common order dated 30.11.2016 both the appeals were dismissed. In so far ITA No. 4866/Mum/2015 is concerned, the same was dismissed as being time-barred as the delay in filing the appeal was not condoned.

5. In the present appeal we are concerned with that portion of the order dated 30.11.2016 dealing with non-condonation of the delay in filing ITA No. 4866 of 2015 resulting in dismissal of the appeal as time barred.

6. On going through the relevant portion of the order passed by the Tribunal, we find that Tribunal did not accept the contention of the appellant that it was under a bonafide belief that since it had filed appeal against the consequential order of assessment as affirmed by the first appellate authority, its interest would be protected and therefore there was no need to independently challenge the order under Section 263.

7. We feel that when Tribunal had entertained the appeal arising out of the consequential assessment, it was not justified on the part of the Tribunal to have rejected the appeal filed by the appellant against the order passed by the jurisdictional administrative Commissioner under Section 263 of the Act because that was the very foundation of the

subsequent assessment proceedings.

8. In the light of the above, we are of the view that it would be in the interest of justice, if the delay in filing ITA No. 4866/Mum/2015 is condoned and the said appeal is heard on merit by the Tribunal.

9. Consequently, we set aside the order dated 30.11.2016 passed by the Tribunal in so far it pertains to ITA No. 4866/Mum/2015. Delay in filing the said appeal is condoned and the matter is remanded back to the Tribunal for hearing the appeal on merit in accordance with law after giving due opportunity to the parties. Accordingly, the two substantial questions of law are answered in favour of the assessee and against the revenue.

10. However, we would like to add that appellant should pay cost of Rs.25,000/- to the Maharashtra State Legal Services Authority, receipt of which should be placed before the Tribunal for rehearing of Income Tax Appeal No. 4866/Mum/2015.

11. Consequently, appeal is allowed.

(MILIND N. JADHAV, J.) (UJJAL BHUYAN,J.)