IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

T.C.A.Nos.262 & 263 of 2020

Shri.K.Prabhu ..Appellant in both cases

Versus

The Assistant Commissioner of Wealth Tax,
Non Corporate Ward 1(4)
Chennai 600 034. ..Respondent in both cases

Common Prayer:- Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, ''D'' Bench, in W.T.A Nos.85, 86, 87 & 88/CHNY/2018 dated 31.12.2018 for the assessment years 1999-00, 2000-01, 2001-02, 2002-03 and 2003-04 dated 31.12.2018.

Appeal filed against the form F of the Appellate Tribunal under Sub Sec(1) or Sub Sec(2) of Sec 24 or Sub Sec(1) of Sec 26 of Wealth Tax Act 1957 in WT Appeals No. 85 to 87 of 2018 on the file of Assistant Commissioner of Wealth Tax Chennai against the order of the office of the Commissioner of Wealth Tax Appeals(2) Chennai-34 in ITA Nos.350 to 354 of 2013-14 AYs 1999- 2000 to AY 2003-2004 CIT(A)2 dated 13.04.2018 against the Assessment order dated 31.03.2006 made in PAN/GIR No.21707P/AKKPP8396P for the Assessment year 2000-2001.

For Appellant in both appeal : Mr.V.S.Jayakumar

For Respondent in both appeal: Ms.R.Hemalatha
Senior Standing counsel

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COMMON JUDGMENT

[Order of the Court was made by T.S.SIVAGNANAM, J.]

These appeals, filed by the assessee, under 260A of the Income Tax Act, 1961 ('the Act' for brevity) are directed against the order dated 31.12.2018 passed by the Income Tax Appellate Tribunal, Bench 'D' Chennai in WPA.Nos.85-88/Chny/2018 for the assessment year 1999-00, 2000-01, 2001-02, 2002-03 and 2003-04. These appeals have been filed raising the following

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Substantial Question of Law:

1.Whether the Tribunal is right in law in dismissing the appeal ex parte without giving adequate opportunity of being heard?

2. Whether the Tribunal is right in law in not giving directions to the Registry to give one more opportunity to the assessee to cure the defects in filing the appeal?

3. Whether the lower authorities have passed the impugned orders in accordance with law and well settled principles?

4. Whether the Tribunal is right in not dealing with the merits of the case in the impugned wealth tax assessments?

2. The Tribunal has dismissed the appeals for the following reasons:

> "2. All the appeals of the assessee are found to have been filed late by 15 days before the Tribunal. However, the assessee has filed the condonation petition in the form of an affidavit to condone the delay of ten days only. The above defect was duly notified in the defect memo served on the assessee through registered post. However, the assessee has not come forward to rectify the defect. Moreover, despite service of notice (RPAD on record), none appeared on behalf of the assessee or filed any adjournment petition. Since the assessee has not rectified the defect notified by the Tribunal, all the appeals filed by the assessee are not maintainable and accordingly, all the appeals are dismissed."

3. From the above order, we find that the Tribunal has proceeded exparte and has not taken a decision on merits and dismissed on a technical ground that the defect which was notified was not rectified by the assessee. The defect appears to be a number of days of delay in filing the appeal, whether it is 10 days or 15 days. The assessee at an explanation stating that there are authorized representative and while taking the appeal papers to be filed, they met with a minor accident and returned without filing the same and subsequently represented without curing the defects. The fact remains, on that day when the Tribunal took up the matter for consideration, none appeared for the assessee. The assessee had preferred these appeals with enormous delay of 436 days. The Hon'ble Division Bench which heard the condone delay petitions took a pragmatic view taking note of the fact that the assessee is an individual and condoned

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the delay subject to condition that he should pay a sum of Rs.5,000/- for all the appeals to the Cancer Institute (WIA), Sardar Patel Road, Adayar, Chennai 600 020. The assessee has complied with the conditions and consequently, the appeals have been numbered taking note of the factual position and also noted that the Defect Memo issued by the Registrar of the Tribunal was only with regard to the computation of delay in filing.

4. This Court is of the considered view that lenient approach could have been adopted to enable the assessee to rectify the defect and the matter could have been heard on merits. Nevertheless the Tribunal has dismissed the matter on such technical ground, we deem it appropriate to restore the appeal on the file of the Tribunal to enable the Tribunal to take a decision on merits.

5. Accordingly, all these appeals are allowed and the impugned orders in W.T.A Nos.85, 86, 87 & 88/CHNY//2018 dated 31.12.2018 are set aside and the Tribunal is directed to condone the delay in filing the appeals and ignore the so called defects whether it is 15 days or 10 days, and direct its Registry to number the appeals, after affording an opportunity to the assessee and the Revenue to take a decision on merits and in accordance with law. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1. The Assistant Commissioner of Wealth Tax,
Non Corporate Ward 1(4)
Chennai 600 034.

2. The Income Tax Appellate Tribunal
D Bench, Chennai

+1cc to Mr.V.S.Jayakumar, Advocate in SR.NO..28525
+1cc to M/s.T.Ravikumar, Advocate in SR.NO..28530

T.C.A.No.262 & 263 of 2020

KS(CO)
RV(23/11/2020)

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