IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.9.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

T.C.A.NOS.337 TO 339 OF 2020

Shri.K.Prabhu ...Appellant in all

Vs

The Assistant Commissioner of
Wealth Tax, Non Corporate
Ward 1(4), Chennai-34. ...Respondent in all

APPEALS under Section 27A of the Wealth Tax Act, 1957 against the common order dated 31.12.2018 passed by the Income Tax Appellate Tribunal, Chennai "D" Bench in W.T.A.Nos.86 to 88/Chny/ 2018 dated 31.12.2018 for the assessment years 2001-02, 2002-03 and 2003-04

Appeal against the order dated 13.04.2018 made in ITA.Nos.352(10) 354/2013-14 passed by the Commissioner of Wealth Tax (Appeals) 2(i/c), Chennai-600034.

And against the Order dated 31/03/2006 passed by the Joint Commissioner of Wealth Tax(OSD), Cuddalore for the Assessment Years 2001-2002, 2002-2003 & 2003-2004 respectively.

For Appellant : Mr.V.S.Jayakumar

For Respondent : Ms.R.Hemalatha, SSC

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

These appeals, filed by the assessee under section 27A of the Wealth Tax Act, 1957 ('the Act' for brevity), are directed against the common order dated 31.12.2018 passed by the Income Tax Appellate Tribunal, Bench 'D' Chennai in WTA.Nos.86 to

88/Chny/2018 respectively for the assessment year 2001-02, 2002-03 and 2003-04.

2. These appeals have been filed by raising the following substantial questions of law:

> "1. Whether the Tribunal is right in law in dismissing the appeals 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?"

3. The Tribunal dismissed the appeals on 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."

4. From the above common order, we find that the Tribunal proceeded exparte and had not taken a decision on merits. The Tribunal dismissed the appeals 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 offered an explanation stating that the authorized representative, while

taking the appeal papers to be filed, had met with a minor accident and returned without filing the same and subsequently represented without curing the defects. The fact remains that on that day when the Tribunal took up the matter for consideration, none appeared for the assessee.

5. The assessee has 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 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-20. The assessee complied with the condition imposed and consequently, the appeals have been numbered taking note of the factual position and also the fact that the defect memo issued by the Registrar of the Tribunal was only with regard to the computation of delay in filing.

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

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

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

RS

To

1. The Income Tax Appellate Tribunal,
Chennai "D" Bench.

2. The Assistant Commissioner of Wealth Tax,
Non Corporate Ward 1(4),
Chennai-34.

3. The Commissioner of Wealth Tax(Appeals) 2(i/c),
Chennai - 34.

4. The Joint Commissioner of Wealth Tax(OSD),
Cuddalore.

TCA.Nos.337 to 339 of 2020

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CS/06/11/2020