In the High Court of Judicature at Madras

Dated : 02.9.2020

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mrs.Justice PUSHPA SATHYANARAYANA

Tax Case Appeal Nos.259 to 261
&
CMP.Nos.9278 & 9283 of 2020

Ms.K.Neelavathy ...Appellant in all cases

Vs

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

APPEALS under Section 27A of the Wealth Tax Act, 1957 against the common order dated 31.12.2018 made respectively in WTA.Nos. 83, 81 and 82/Chny/2018 on the file of the Income Tax Appellate Tribunal, Chennai 'D' Bench respectively for the assessment years 2003-04, 2001-02 and 2002-03.

Against the order dated 16/04/2018 made in ITA Nos. 359 to 361/14 on the file of the Commissioner of Wealth Tax(Appeals)-2, Chennai, for the assessment year 2001-02 to 2003-04.

Against the order dated 24/03/06 made in PAN GIR No. 21705-N/ADHPN4842M on the file of the Joint Commissioner of Wealth Tax, Cuddalore for the assesment year 2003-04, 2001-02 and 2002-03.

For Appellant : Mr.V.S.Jayakumar

For Respondent : Mrs.R.Hemalatha, SSC

COMMON JUDGMENT

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

We have heard Mr.V.S.Jayakumar, learned counsel appearing for the appellant - assessee and Mrs.R.Hemalatha, learned Senior Standing Counsel accepting notice for the respondent - Revenue.

2. These appeals, filed by the Revenue under Section 27A of the Wealth Tax Act, 1957 (for brevity, the Act) are directed against the common order dated 31.12.2018 made respectively in WTA.Nos.83, 81 and 82/Chny/2018 the file of the Income Tax Appellate Tribunal, Chennai 'D' Bench (for short, the Tribunal) respectively for the assessment years 2003-04, 2001-02 and 2002-03.

3. The Revenue has filed these appeals by raising the following substantial questions 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 appeals?
>
> 3. Whether the Lower Authorities have passed the impugned orders in accordance with law and well settled principles ? And
>
> 4. Whether the Tribunal is right in not dealing with the merits of the case in the impugned wealth tax assessments ?"

4. The Tribunal 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.”

5. From the above order, we find that the Tribunal has proceeded ex parte and has not taken a decision on merits and 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 gave an explanation stating that they had an authorized representative and while taking the appeal papers to be filed, he met with a minor accident and returned without filing the same and subsequently represented the papers without curing the defects.

6. 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, 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 has complied with the condition and consequently, these appeals have been numbered taking note of the factual position and also noting that the defect memo issued by the Registrar of the Tribunal was only with regard to the computation of delay in filing.

7. 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 matter could have been heard on merits. Nevertheless the Tribunal has dismissed the matter on such a technical ground. Therefore, we deem it appropriate to restore the appeals on the file of the Tribunal to enable the Tribunal to take a decision on merits.

8. Mrs.R.Hemalatha, learned Senior Standing Counsel appearing for the Revenue submits that the Tribunal may exercise its jurisdiction under Rule 12 of the Income Tax Appellate Tribunal Rules in so far as the matter pertaining to condonation of delay.

9. Under normal circumstances, we would have acceded to such a prayer. Considering the fact that the assessee is an

individual and the disputed/undisputed delay is either 10 days or 15 days, we exercise our discretion and condone the delay.

10. Accordingly, all these appeals are allowed, the common impugned order in WTA.Nos.83, 81 and 82/Chny/2018 dated 31.12.2018 is set aside and the Tribunal is directed to condone the delay in filing the appeals and ignore the so called defect whether it is 15 days or 10 days and direct its Registry to number the appeals and after affording an opportunity to the assessee and the Revenue, the Tribunal shall take a decision on merits and in accordance with law. No costs. Consequently, the connected CMPs are closed.

s/d-
Assistant Registrar

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 Joint Commissioner of Wealth Tax,
Cuddalore.

+1cc to Mr.V.S.Jayakumar, Advocate, SR. No.28524

+1cc to Mr.T.Ravi Kumar, Advocate, SR. No. 28528

TCA.Nos.259 to 261 of 2020
&
CMP.Nos.9278 & 9283 of 2020

RSV(CO)
RN(08/12/2020)