CMP.Nos.10544, 10553 and 10569 of 2020 respectively in
TCA.SR.Nos.101144, 101145 & 101143 of 2019

T.S.SIVAGNANAM,J
AND
V.BHAVANI SUBBAROYAN,J

COMMON ORDER
(Order of the Court was made by T.S.SIVAGNANAM,J)

We have heard Mr.R.Vijayaraghavan, learned counsel appearing on behalf of M/s.Subbaraya Aiyer Padmanabhan, learned counsel on record for the petitioner – assessee and Mr.T.Ravikumar, learned Senior Standing Counsel accepting notice for the respondent – Revenue.

2. These petitions have been filed seeking to condone the delay of 1621 days i.e., more than four years in filing the appeals against the common order passed by the Income Tax Appellate Tribunal, Chennai 'A' Bench (for short, the Tribunal) in ITA.Nos.2039 to 2041/Mds/2012 dated 30.10.2014.

3. The affidavits filed in support of the delay condonation petitions have been sworn to by the Director of the petitioner company. It is admitted in the affidavits that the certified copy of the common impugned order passed by the Tribunal was received by the petitioner company on 10.11.2014. If the appeals had to be filed without delay i.e., within the period of limitation prescribed under the Statute, namely 120 days, the appeals should have been filed on or before 27.2.2015. But, they have been filed only on 05.8.2019.

4. We have gone through paragraph 4 of the respective affidavits, which is purported to be the explanation for the long delay.

5. The assessee would state that when they received the subsequent orders from the Tribunal following the earlier years' orders namely the impugned order, their authorized tax representative asked as to whether any appeal had been filed before this Court against the impugned order. It is further stated that the petitioner understood that the same got misplaced and with great difficulty, after more than four years, they traced and found the original order, that thereafter approached the counsel, who had advised to file appeals before this Court immediately and that in terms of the advice rendered, the appeals were filed, however, with delay.

6. We have carefully considered the submissions of the learned counsel for the petitioner.

7. The reasons assigned for the inordinate delay are not convincing apart from being vague. It is settled principle that length of delay is not always a reason for rejecting the application under Section 5 of the Limitation Act. There have been cases where even a delay of 10 days was not condoned whereas a delay of 100 days was condoned. Hence, each case has to be examined on the cause shown by the petitioner. As noted above, the petitioner - assessee would state that when they received subsequent orders of the Tribunal for the earlier years, they found that it was based on the impugned order passed by the Tribunal and against the orders passed for the earlier year and the subsequent year namely AY 2003-04, AY 2009-10 and AY 2010-11, the appeals are pending before this Court.

8. We find that the petitioner – assessee is a private limited company, which was taken over by a French company and from the material papers placed before this Court, we find that right through the assessment proceedings, they were represented by chartered accountants as their authorized representatives. Admittedly, the impugned common order was received by the petitioner – assessee as early as 10.11.2014. So far as the orders passed by the Tribunal for the assessment years 2003-04, 2009-10 and 2010-11 are concerned, the assessee preferred appeals and they are still pending before this Court. Therefore, it is hard to believe the stand taken by the assessee that they misunderstood the scope of the order. Such a statement cannot be countenanced by the director of a private limited company, which was taken over by a French company, which has got all the wherewithal to render expert advice. As mentioned earlier, before the Assessing Officer, at the very first instance, the petitioner – assessee was represented by chartered accountants and even before the Appellate Authority and by a counsel before the Tribunal. Thus, we find that the inordinate delay in filing the appeals has not been explained and that there is no justification to condone the delay.

9. For the above reasons, the above civil miscellaneous petitions stand dismissed.

RS 25.9.2020

T.S.SIVAGNANAM,J
AND
V.BHAVANI SUBBAROYAN,J

RS

CMP.Nos.10544, 10553 & 10569 of 2020 respectively in TCA.SR.Nos. 101144, 101145 & 101143 of 2019

25.9.2020