IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2020

CORAM

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

T.C.A.Nos.357 & 358 of 2020
and
C.M.P.Nos.11260 of 2020

UFX Ventures Pvt.Ltd.,
Rep.by its Managing Director,
33/1, Wallajah Road, Chepauk,
Chennai - 600 002 ..Appellant in both T.C.As

Versus

Assistant Commissioner of Income Tax,
Corporate Circle - 3(2)
Ayakar Bhavan Wanaparthy Block,
Room No.414, IV Floor,
Nungambakkam High Road,
Chennai - 600 034. ..Respondent in both T.C.As

Common Prayer in T.C.A.Nos.357 & 358 of 2020:- Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai dated 20.02.2020 made in I.T.A.Nos.2217 & 2218/Chny/2019 relating to the Assessment Years 2014-15 & 2013 -14, against the proceedings passed by the commissioner of Income Tax (Appeals)-II, Chennai made in ITA No.64 and 269/16-17 date of order 29.06.2018

against the proceedings passed by the Assistant Commissioner of Income Tax, Corporate Circle -3(2) Chennai -34 made in GIR No/PAN. AABCC4581E for the assessment Year 2013-14, date of order 30.03.2016

against the proceedings passed by the Assistant Commissioner of Income Tax, Corporate Circle 3(2) Chennai-34 made in GIR No/PAN AABCC4581E for the assessment year 2014-15, date of order 20/12/2016.

For Appellant :Mr.B.Deepak Narayanan
[in both T.C.As]

For Respondent : M/s.V.Pushpa
Junior Standing counsel
[in both T.C.As]

JUDGMENT

[Common Judgment was delivered by T.S.Sivagnanam,J.]

These appeals have been filed by the assessee, challenging the common order dated 20.02.2020 passed by the Income Tax Appellate Tribunal, ('the Tribunal' for brevity) Madras 'D' Bench, Chennai, in I.T.A.Nos.2217 & 2218/Chny/2019 for the Assessment Years 2014-15 and 2013-14 respectively. The assessee has raised the following Substantial Questions of Law for consideration:

> "1.Whether the Hon'ble ITAT was right in refusing to condone the delay of 317 days, without considering the restoration application filed by the Appellant before CIT(A) was duly acknowledged by CIT(A).
>
> 2. Whether the Hon'ble ITAT was right in observing that there is no merits in the grounds of appeal, where in fact there was neither any submissions made in respect to the merits of the case nor any observation was made in the Order of Hon'ble ITAT pertaining to the merits of the dispute."

2. We have elaborately heard Mr.B.Deepak Narayanan, learned counsel for the appellant/assessee and M/s.V.Pushpa, learned Junior Standing counsel appearing for the respondent/Revenue.

3. The assessee is a Private Limited company, engaged in the business of professional consistency services, publishing newspapers, etc., It filed the return of income for the Assessment Year under consideration AY-2013-14 on 31.03.2015, admitting a loss of Rs.59,99,532/- and for the Assessment Year under consideration AY-2014-15 on 30.03.2016, admitting a total income as "NIL". The Assessing Officer issued notice under Section 142(1) of the Act and completed the assessment by order dated 30.03.2016 for the Assessment Year 2013-14 and by order dated 20.12.2016 for the Assessment Year 2014-15. Aggrieved by the same, the assessee preferred appeals before the Commissioner of Income Tax (Appeals) ['CIT(A)' for brevity]. The appeals were dismissed for default by common order dated 29.06.2018. Soon after the assessee came to know about the dismissal of the appeals for default, they filed an application for restoration dated 24.07.2018, stating that they received the order passed by

the CIT(A) on 18.07.2018, dismissing the appeals for default on account of non-appearance of the assessee on 13.06.2018 and explained the reason for non-appearance by stating that their authorized representative, the Chartered Accountant was in his native place in Kerala State in connection with his daughter's marriage fixed on 16.07.2018 and the assessee could not make any alternate arrangements. Thus, the assessee pleaded that the circumstance cited by them was beyond control and prayed before the CIT(A) that the order dated 29.06.2018, dismissing the appeals for default may be revoked and appeals be restored to the file for being heard and disposed. To substantiate the cause shown by the assessee, the copy of the wedding invitation of the marriage of the daughter of the assessee's Chartered Accountant was enclosed. The assessee would submit that the said application was presented in the office of the CIT(A) on 06.08.2018 and an acknowledgment has also been given by the office of the CIT(A). However, the application was not taken up for consideration and it appears that the assessee was advised to file an appeal before the Tribunal. By then, the period of limitation for filing the appeal had expired and there was a delay of 317 days in filing the appeal before the Tribunal. The assessee filed an affidavit, sought for condonation of delay and filing the appeals and explained the reason for the delay period by mentioning that they had approached the CIT(A) for recalling the order, dismissing the appeals for default and restore the appeals to be heard on merits, but the CIT(A) did not pass any orders on the Restoration Petition and this is the reason, they could not approach the Tribunal within the period of limitation. The Tribunal, while considering the explanation offered by the assessee, held that the assessee has not filed any material to show that they had filed Restoration Petition before the CIT(A) for recalling the exparte order. Accordingly, on the ground that no proof has been filed by the assessee, the appeals were dismissed. These orders have been challenged by the assessee before us. As could be seen from the material papers placed before us, the letter dated 24.07.2018 from the assessee to the CIT(A) seeking for restoration of the appeals dismissed for default has been acknowledged by the office of the CIT(A) dated 06.08.2018. Therefore, we are satisfied that the assessee did move the CIT(A) for restoring the appeals. However, the fact remains that the CIT(A) did not pass any orders. This could have been for the reason that the CIT(A) might had doubt in his mind as to whether he would be entitled to recall and review the earlier order and restore the appeals and hear the same afresh.

4. The learned counsel for the appellant had placed reliance on the decision of the High Court of Allahabad in the case of Commissioner of Income Tax Meerut Vs. Smt.Madhu, in the case of Income Tax Appeal Defective No.93 of 2014 dated 28.10.2014.

5. The Substantial Questions of Law framed for consideration in the said case was whether the Tribunal erred in law in granting the CIT(A), the power of review when none is provided by the legislature and more so, owing to the fact that the power of review is the specific statutory power, which may not be interfered with, if not provided by the legislature. In the said case, the CIT(A), who initially dismissed the appeals for default, subsequently, had recalled the orders and restored the appeals for a fresh decision. However, subsequently, the CIT(A) informed the said assessee that the order, recalling the appeal, was incorrect and contrary to law and dismissed the appeal. This order was challenged before the Tribunal. The Tribunal held that the CIT(A), who was conferred with the power to adjudicate upon a particular issue had inherent power to recall its orders and if the same is done, no prejudice would be caused to the Revenue and it was pointed out that the right of hearing is an important right and the CIT(A) had only passed its earlier orders on merits, keeping in view of the principles of natural justice. The Revenue challenged the said order before the High Court of Allahabad, contending that Section 251 of the Act confers specified powers on the Commissioner (Appeals) and no power has been granted to review his own order and hence, the order in which the CIT(A) recalled the earlier order, dismissing the appeals for want of prosecution was contrary to law. The said submission was rejected by the Hon'ble Division Bench by assigning the following reasons:

> "We find no merit in the submission. The Commissioner (Appeals), as the record would admittedly indicate, dismissed the appeal filed by the assessee without going into the merits on the ground that despite several notices, the assessee had not appeared in support of the appeal. While restoring the appeal to file and recalling the order of dismissal, the CIT (A) took due note of the submission of the assessee that on most of the dates, either the CIT (A) had been transferred or was not present at the hearing of the appeal. The CIT (A) restored the appeal to file evidently in order to afford a fair opportunity of hearing to the assessee. However, inexplicably, he proceeded to recall the order of restoration.
>
> In the case of Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal & Ors., AIR 1981 SC 606, the Supreme Court had occasion to deal with a similar issue. Under the provisions of Industrial Disputes Act, 1947, the Tribunal has no jurisdiction to recall or review an award after expiry of 30 days of its publication. An application was moved to set aside an ex parte award after thirty days. It was held by the Tribunal that it had no power to set aside the said award. The Supreme Court held that the Tribunal had an

ancillary or incidental power for doing justice in such circumstances. The Supreme Court observed as follows in paragraph 6 of the judgment:-

> "6. We are of the opinion that the Tribunal had the power to pass the impugned order if it thought fit in the interest of justice. It is true that there is no express provision in the Act or the rules framed thereunder giving the Tribunal jurisdiction to do so. But it is a well-known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, we are of the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. We do not find any such statutory prohibition. On the other hand, there are indications to the contrary."

In our view, the Tribunal was justified in holding that the CIT (A) who had dismissed the appeal for want of prosecution had inherent powers ex debito justitiae to recall that order and restore the appeal for hearing on merits. This is not equivalent to the power of review. The CIT (A) has not exercised the power of review but has only exercised the inherent power in the interests of justice of restoring the appeal which had been dismissed for want of prosecution. That order of restoration was not contrary to law and the CIT (A) was, hence, found by the Tribunal to have erred in subsequently recalling his order of restoration. The appeal after being restored to file was being heard on merits, as observed by the Tribunal, and no prejudice as such has been sustained by the Revenue, since both the sides would be heard by the CIT (Appeals) before any final orders are passed.

In this view of the matter, the appeal will not give rise to any substantial questions of law. It is, accordingly, dismissed. There shall be no order as to costs."

6. Mr.B.Deepak Narayanan, learned counsel appearing for the appellant would argue that the above decision would come to the aid of the assessee and the CIT(A) ought to have passed an order on the application for restoration.

7. In our considered view, we need not travel that far to decide the powers of the CIT(A) in these appeals nor the Substantial Questions of Law framed for consideration is on that aspect. This is more so, because we are convinced that the assessee had filed an application before the CIT(A) on 24.07.2018 for recalling the order, dismissing the appeals for default and the date seal is sufficient proof of filing such application. Therefore, it appears that this record was not placed before the Tribunal when it passed the impugned order. That apart, this Court has always been lenient, more particularly, to the Revenue when appeals are filed with inordinate delay. The reason being this Court is required to take a decision on a Substantial Questions of Law and it would be inequitable to reject the appeal on the ground of delay and also bearing in mind the legal principle that none benefits by lodging an appeal belatedly. The exception to this rule would be, where the delay is on account of mala fide reasons or for certain other collateral purposes. If such is the case, even a delay of one day can be rejected. We find the explanation offered by the assessee to be convincing and acceptable and therefore, the impugned order passed by the Tribunal warrants interference.

8. The appeals filed by the assessee are allowed and the Substantial Questions of Law are answered in favour of the assessee. The order passed by the Tribunal is set aside. Consequently, the common order passed by the CIT(A) dated 29.06.2018 is set aside and the appeals are restored on the file of the CIT(A) to be heard and decided on merits, after affording an opportunity of hearing to the appellant/assessee. With regard to the issue regarding the power of CIT(A) under Section 251 to recall its order, is left open to be adjudicated at an appropriate time. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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

2.The Commissioner of Income Tax (Appeals)-II,
Chennai.

3.The Assistant Commissioner of Income Tax,
Corporate Circle -3(2) , Chennai-34

4.The Section Officer, VR Section,
High Court Madras.

+1 cc to M/s.M.Swaminathan, Advocate Sr.No. 33401



AK(CO)
RMP(18/11/2020)