IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2020

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THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

T.C.A.No.359 of 2017

M/s. Rathna Stores Pvt. Ltd.
No.79, Usman Road
T.Nagar,
Chennai - 600017. ...Appellant

vs.

The Commissioner of Income Tax III,
Chennai ...Respondent

Prayer ::- Appeal filed against the order of the Income Tax Appellate Tribunal, "C" Bench, Chennai, in ITA No.113/Mds/2016 dated 29.04.2016

TCA 359 OF 2017
Appeal against the order dated 20.01.2016 made in ITA No.89/2013-14/A-3 on the file of the Commissioner of Income Tax (A)-3, Chennai, for the Assessment year 2007-08 against the order dated 26-09-2013 made in PAN /GI No.AACCR728F on the file of the Deputy Commissioner of Income Tax Company Circle-V(3), Chennai for the Assessment Year 2007-2008 against the order dated 07-03-2013 made in PAN/GI No.AACCR7287F on the file of the Assistant Commissioner of Income Tax, Company Circle-V(3), Chennai for the Assessment Year 2007-08 against the order dated 29/03/2012 made in PAN AACCR7287F on the file of the Commissioner of Income Tax, Chennai III, Chennai for the Assessment year 2007-08 against the order dated 30-12-2009 made in PAN.AACCR7287F on the file of the Income Tax Officer(OSD), Company Circle V(3), Chennai.

For appellant : Mr.S.Sridhar

For respondent : Mr.T.Ravikumar

JUDGMENT

(Made by DR.VINEET KOTHARI, J.)

The Court was held by Video Conference, as per the Resolution of the Full Court dated 3 July 2020, by Judges at their respective residence and the counsel, staff of the Court appearing from their respective residences.

2. This appeal has been filed by the Assessee under Section 260A of the Income Tax Act, against the order of the Tribunal dated 29 April 2016, dismissing the appeal of the Assessee against the order of the Commissioner of Income Tax, under Section 263 of the Act. The said appeal was filed by the Assessee with a huge delay of 1333 days, approximately four years. The Assessee did not file any application seeking condonation of delay, along with affidavit, before the Tribunal, explaining reasons for delay, despite an opportunity given by the Tribunal on 14 March 2016 and the matter was adjourned to 17 March 2016. Paragraph No.2 of the order of the Tribunal is quoted below for ready reference.

> "2.When the appeal was taken up for hearing, it was found that the Assessee has not filed any petition for condonation of delay of 1333 days in filing the appeal before the Tribunal. Despite service of defect notice (AD on record) mentioning the appeal filed by the Assessee is barred by 1333 days, the Assessee has failed to file any petition for condonation of huge delay. Initially, the hearing of the appeal was fixed on 14.03.2016 and at the request of the learned for the Assessee, the hearing was adjourned to 16.03.2016. Again at the request of the learned counsel for the Assessee, the hearing was adjourned to 17.03.2016. When the appeal was taken up for hearing on 17.03.2016, though the learned counsel for the Assessee has appeared, but could not file any petition for condonation of delay in filing the appeal, the Bench was of the opinion that the appeal filed by the Assessee is not maintainable. Accordingly, the appeal filed by the Assessee is dismissed as not maintainable."

3. Mr.S.Sridhar, learned counsel for the appellant submitted that the Assessee unfortunately waited for passing of the penalty order, for which a direction was given by the learned Commissioner of Income Tax under Section 263 of the Act. When

the penalty order was passed by the Commissioner of Income Tax, the Assessee filed the said appeal before the learned Tribunal, challenging the said order under Section 263 of the Act itself and in that process, the delay occurred. He submitted that on 14 March 2016 an opportunity was given to the Assessee to file the application seeking condonation of delay with affidavit. The time given by the learned Tribunal was very short and therefore, he could not file the application and the application came to be dismissed by the Tribunal on 29 April 2016.

4. The learned counsel for the Revenue Mr.Ravikumar supported the impugned order and submitted that for want of application filed before the learned Tribunal, for seeking condonation of delay, the learned Tribunal was justified in dismissing the appeal on account of huge delay of 1333 days.

5. Having heard the learned counsel for the parties, we do not find any substantial questions of law arising in the present appeal. However, we are of the opinion that the learned Tribunal could have condoned the delay upon application supported by an affidavit if a reasonable ground for delay was made out by the Assessee.

6. Under these circumstances, we are inclined to allow the present appeal and remand the matter back to the learned Tribunal by giving an opportunity to the Assessee to file such application for seeking condonation of delay, along with affidavit of the Assessee or its counsel, subject to payment of cost of Rs.25,000/- (Rupees Twenty Five Thousand only) by the Assessee to the respondent Revenue Department.

7. In case the cost of Rs.25,000/- (Rupees Twenty Five Thousand only) is deposited by the Assessee with the respondent Assessing Authority, within a period of four weeks from today, the impugned order dated 29 April 2016 shall stand set aside and the matter shall stand restored to the learned Tribunal for the aforesaid Assessment Year 2007-08.

8. The Assessee may file his application seeking condonation of delay along with affidavit, explaining the circumstances and reasons for delay in filing appeal, which may be considered by the learned Tribunal, in accordance with law.

9. With this observation, the appeal is disposed of in the manner indicated above.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner of Income Tax III,
Chennai

2.The Income Tax Appellate Tribunal,
C Bench, Chennai.

3.The Commissioner of Income Tax(A)-3,
Chennai.

4.The Deputy Commissioner of Income tax,
Company Circle-V(3), Chennai.

5.The Assistant Commissioner of Income Tax,
Company Circle - V(3), Chennai.

6.The Income Tax Officer,(OSD)
Company Circle V(3), Chennai.

+1cc to Mr.T.Ravi Kumar, Advocate, S.R.No.27053

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LN(CO)
KKV/01/09/2020