

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 11.1.2021
CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and

THE HONOURABLE MS.JUSTICE R.N.MANJULA
Tax Case Appeal No.507 of 2020

The Commissioner of Income
Tax, Chennai

...Appellant

Vs

M/s.Deepam Construction

...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 04.12.2019 passed by the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai made in I.T.A.No.2309/Chny/2019 for the assessment year 2013-14. Appeal filed against the order passed by the Commissioner of Income Tax (Appeals)-15, Chennai dated 26.06.2019 made in ITA.No.9/CIT(A)-15/2016-2017 for the Assessment year 2013-14.

For Appellant : Mr.J.Narayanaswamy, SSC
For Respondent : Mr.N.Devanathan

Judgment was delivered by T.S.SIVAGNANAM, J

This appeal has been filed by the Revenue under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity) challenging the order dated 04.12.2019 made in I.T.A.No.2309/Chny/2019 on the file of the Income Tax Appellate Tribunal, Chennai, 'A' Bench ('the Tribunal' for brevity) for the assessment year 2013-14.

2. The Revenue has filed this appeal by raising the following substantial questions of law:

"1. Whether on facts and in the circumstances of the case, the Tribunal was right in holding that there is no delay in filing of e-appeal by the assessee to CIT(A) and remitting the case back for disposal on merits and thereby by condoning the delay in filing of appeal before CIT(A) when the CIT (A) had found that the assessee had not filed any e-appeal?

2. Whether on facts and in the circumstances of the case, the Tribunal was right in holding that there is no delay in filing of e-appeal since the date of filing

of belated e-appeal relates back to the date of filing of manual appeal?

3. Whether on facts and in the circumstances of the case, the Tribunal was right ignoring Rule 45 of the IT Rules mandating filing of e-appeal with effect from 01.3.2016 and Board Circular 20/2019 dated 26.5.2016 extending the time for filing of e-appeal only till 15.6.2016 and thereby condoning the delay in filing of first appeal? and

4. Whether, on facts and in the circumstances of the case, the Tribunal was right in condoning the delay in filing of appeal even though the assessee had failed to file any petition for condoning the non filing of e-appeal?"

3. We have heard Mr.J.Narayanaswamy, learned Senior Standing Counsel appearing for the appellant/Revenue and Mr.N.Devanathan, learned counsel accepting notice for the respondent/assessee.

4. The issue involved in this case is as to whether the manual appeal filed by the assessee before the Commissioner of Income Tax (Appeals)-15, Chennai [for short the CIT(A)] could have been reckoned as proper filing of appeal on the ground that the e-appeal was filed much after filing of the manual appeal.

5. An identical question came up for consideration before this Court and a Division Bench of this Court, to which, one of us (TSSJ) was a party, held in favour of the assessee and against the Revenue in the decision in the case of CIT Vs. A.A.Antony & others [TCA. Nos.432, 433 and 436 of 2020 dated 18.12.2020] wherein the relevant portions read as follows :

"12. Taking into consideration the Circular issued by CBDT, which in our opinion, appears to be a one time measure, the substantive right of appeal should not be denied to the assessee on hand on a technical ground. However, we make it clear that this observation cannot be taken advantage by the assessee, as of now, when the procedure has been in vogue ever since the year 2016 and stood the test of time and in all probabilities, as of now, all teaching problems would have been solved. Therefore, bearing in mind the fact situation in the year 2016, we are of the view that the appeals need not have been rejected by the CITA on the ground that they were not e-filed within the period of limitation.

13. One more aspect which we had noted is that in the case of assessee in T.C.A.No.433 of 2020, the order of

assessment was passed on 31.03.2016, limitation for filing the appeal before the CITA would expire on 30.04.2016 and an appeal filed beyond the said period was time barred. However, if Circular No. 20/2016 is made applicable, then, the time limit for filing the e-appeals stood extended upto 15.06.2016 and even going by the date for verification of e-appeals, it was made operational on 12.05.2016 for individuals, both these dates are well beyond the period of limitation in the case on assessee in T.C.A.No.433 of 2020.

14. Mr.Karthik Ranganathan, learned Standing counsel for the Revenue had submitted that the assessee may be sent back to the CITA to file an application for condonation of delay and the CITA may be directed to consider the same in accordance with law.

15. We are of the view that if we are to direct the assessee to adopt such a procedure, as argued by the learned standing counsel, it would be very harsh on the assessee, especially when the appeals are of the year 2016-2017 and even assuming if it is done, the contention which were advanced before us by Mr.A.S.Sriraman, learned counsel for the assessee would be once more again advanced before the CITA and ultimately, lead to another round of litigation on the issue of limitation alone, which we feel should not happen.

16. That apart, as observed earlier, the reprieve given to the assessee by the CBDT appears to be a one time measure and the benefit can be extended to the respondents / assessee and we find that there is no error committed by the Tribunal in exercising discretion in favour of the respondents / assessee.

17. Apart from the above findings rendered by us we note that all the appeals filed by the revenue would have been dismissed on the ground of low tax effect, but for the application of Circular No. 20/16.

18. Mr.J.S.Narayanasamy, learned Senior Standing counsel for the Revenue submitted that in the appeals in T.C.A.Nos.432 and 436

of 2020, the delay is more than 400 days and not marginal, as in the case of assessee in T.C.A.NO.433 of 2020 and in another case it is more than 900 days.

19. Be that as it may, we have taken note of the fact situation, which was prevailing at the relevant time and as noted by the CBDT while issuance of Circular, therefore, we do not wish to take a different view than the view taken by us noting the fact situation in T.C.A.No.433 of 2020.

In the light of the above, we are not inclined to entertain the appeals filed by the Revenue, which are accordingly dismissed, but, we leave the Substantial Questions of Law open for consideration".

6. Thus, by following the above referred to decision, we are constrained to hold that the order passed by the Tribunal does not call for interference.

7. In the result, the above tax case appeal filed by the Revenue is dismissed, the impugned order passed by the Tribunal is confirmed and the substantial questions of law raised are answered against the Revenue in terms of the said decision. No costs.

Sd/-

Assistant Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

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

2.The Commissioner of Income Tax (Appeals)-15
Chennai

TCA.No.507 of 2020

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