OD-21

ITAT/16/2021
IA No.GA/1/2021
IA No.GA/2/2021

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA

-Versus-

M/S. SETHIA OIL INDUSTRIES LIMITED

Appearance:
Ms. Smita Das De, Adv.
...for the appellant.

Mr. S. M. Surana, Adv.
Mr. Anil Kumar Dugar, Adv.
Mr. Rajarshi Chatterjee, Adv.
...for the respondent.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 16th June, 2022.

The Court : We have heard Ms. Smita Das De, learned standing counsel for the appellant/revenue and Mr. S. M. Surana, learned counsel assisted by Mr. Anil Kumar Dugar and Mr. Rajarshi Chatterjee, learned Advocates for the respondent/assessee.

There is a delay of 1178 days in filing the appeal. The respondent/assessee has filed an affidavit-in-opposition and the learned advocate for the respondent would vehemently oppose the delay. An affidavit-in-reply to the affidavit-in-opposition has been filed by the department in Court today which is taken on record. On perusal of the affidavit-in-reply we find that if the appeal had been filed prior to 3rd September, 2017 it would have been within time. However, the appeal was filed on 25th January, 2021 resulting in a delay of 1178 days. Though there is absolutely no explanation given in the affidavit in support of the application for condonation of delay, in the reply an attempt has been made by the department to explain the delay. We find such an attempt is absolutely futile. In paragraph 3 of the reply, the department has given a tabulated statement giving certain dates and events. It may not be necessary for us to take into all the dates and events post 14th September, 2018 as the period of limitation for filing the appeal expired on 3rd September, 2017. Therefore, if the department has to make out a case, they should explain the delay from 3rd September, 2017 and the department has sought to explain the delay after 14th September, 2018.

The reasons given by the department is that the case was transferred from Central Circle-3(3), Kolkata to DCIT, Circle – 9(2), Kolkata as per the order dated 17th May, 2018 passed under Section 127 of the Income Tax Act, 1961. The affidavit-in-reply proposes to explain the events which took place after 14th September, 2018. However, in absence of any explanation from 3rd September, 2017 to 14th September, 2018 we have no option except to hold that the delay cannot be condoned. Even going by the dates and events after 14th September, 2018 we find that there are several periods during which the delay remained unexplained. In a recent decision of the Hon'ble Supreme Court in *Union of India vs. Central Tibetian School Administration & Ors.* reported in 2020 (21) SCC Online SC 119 the delay of 532 days in filing the appeal was refused to be condoned as the Hon'ble Supreme Court took note of its earlier decision in the *State of Madhya Pradesh vs. Bherulal,* reported in [2020] 10 SCC 654 wherein the Court discouraged the State Government and public authorities in adopting an approach that they can walk into the Hon'ble Supreme court as and when they please ignoring the period of limitation prescribed by the statute as if the limitation statute does not apply to them. In the said decision, the celebrated decision in the case of *Chief Post Master General vs. Living Media India Ltd.* reported in 2012 (3) SCC 563 was also taken note of. In any event, the facts of each case has to be examined to see whether sufficient cause has been shown for condonation of delay. In the case on hand, there is a delay of 1178 days. As pointed out earlier for more than two years there is absolutely no explanation and in the department who is presently pursuing the appeal would state that it is the assessment Circle which is handling the file prior to its transfer and they have no opinion about the delay which had occurred prior to the files which were transferred to them. This cannot be taken to be an explanation for condonation of delay.

Thus, for the above reasons, we are not inclined to condone the inordinate delay in filing the appeal. Accordingly, the application for condonation of delay (IA No.GA/1/2021) is dismissed.

Consequently, the appeal (ITAT/16/2021) stands rejected.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

A/s/S.Das