IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2024

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

Tax Case Appeal No.162 of 2024

Comfy Shoe Makers Private Limited
No.295, SIDCO Industrial Estate
Ambattur, Chennai 600 098. ... Appellant

Vs.

The Principal Commissioner of Income Tax-1
108, Nungambakkam High Road
Nungambakkam, Chennai - 600 034. ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai, dated 15.09.2023 in M.P.No.88/Chny/2023 in I.T.A.No.688/Chny/2022.

For Appellant : Mr.R.Kannan

For Respondent : Mr.T.Ravi Kumar
Senior Standing Counsel

JUDGMENT

(Delivered by **C.SARAVANAN, J.**)

The appellant is before this Court against the impugned Miscellaneous Order dated 15.09.2023 passed by the Tribunal.

2. The case of the appellant is that the appeal in I.T.A.No.688/Chny/2022 filed by the appellant before the Tribunal was allowed on merits on 26.09.2022 and

therefore, any application filed to recall the aforesaid order under Section 254(2) of the Income Tax, 1961 ought to have been filed within the limitation prescribed.

3. It is submitted that the Tribunal, may, at any time with a view to rectify any mistake apparent from the record, amend any order passed by it under sub-section (1), provided such application is filed within six months from the date of the order passed by the Tribunal.

4. It is submitted that the order was passed by the Tribunal on 26.09.2022 and the application was filed purportedly under Section 253(3) of the Income Tax Act, 1961 and the last date for filing such application expired on 31.03.2023 and therefore, the delay of four days in filing the application under Section 253(3) of the Income Tax Act, 1961 cannot be condoned.

5. Section 253 deals with appeals to the Appellate Tribunal. Section 254 deals with orders of Appellate Tribunal.

6. As per Section 254(2) of the Income Tax Act, 1961, the Appellate Tribunal may, at any time within four years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1), and shall make such amendment, if the mistake is brought to its notice by the assessee or the Assessing Officer.

7. A reading of the above provision indicates that Section 5 of the Limitation Act, 1963, is not expressly or implicitly barred.

8. Therefore, it cannot be said that the Tribunal has committed an error while condoning the delay of four days in filing the application for rectifying the order under Section 254(2) of the Income Tax Act, 1961.

9. That apart, all that the Tribunal has done is that it has restored the appeal to the files of the Court in the light of the decision of the Hon'ble Supreme Court in **M/s.Checkmate Services Private Limited** Vs. **Commissioner of Income Tax-1**, in Civil Appeal No.2833 of 2016 dated 12.10.2022.

10. As such, we do not find any reasons to interfere with the impugned Miscellaneous Order dated 15.09.2023 passed by the Tribunal. No substantial question of law arises for consideration as the appeal in I.T.A.No.688/Chny/2022 has to be decided on merits by the Tribunal. Accordingly, the appeal is dismissed. No costs.

(R.S.K.,J.) **(C.S.N.,J.)**

13.08.2024

NCS : Yes/No
Index : Yes/No
KST

R.SURESH KUMAR, J.
AND
C.SARAVANAN, J.

KST

To

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

T.C.A.No.162 of 2024

13.08.2024