IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.06.2009

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The Honourable Mr.Justice F.M.IBRAHIM KALIFULLA

and

The Honourable Mr.Justice B.RAJENDRAN

TC(A). No. 421 of 2009

and TCMP.No. 1 of 2009

Madhu Dadha ....Appellant

-vs-

The Assistant Commissioner

of Income Tax Officer

Central Circle IV(2)

Chennai 600 034 ...Respondent

Tax Case Appeal against the order of the Income Tax Appellate Tribunal, Chennai 'B' Bench dated 25.04.2008 in ITA No.120/Mds/2007 for the Block Assessment year 1.4.1988 to 15.12.1988.

For Appellant : Mr. G. Ashokapathy

for M/s. Pass Associates.

JUDGMENT

The Judgment of the court was delivered by B.RAJENDRAN,J)

The assessee has preferred the above appeal as against the order passed by the Income Tax Appellate Tribunal, Chennai 'B' Bench dated 25.04.2008 in ITA No.120/Mds/2007 for the Block Assessment year 1.4.1988 to 15.12.1988.

2. The assessee is a partner in a firm and also a shareholder of M/s. Tamil Nadu Dadha Pharmaceuticals Limited. Pursuant to a search and seizure action conducted in the case of Sun Pharma Group of Industries at Mumbai and Baroda on 17.12.1988 consequential search was carried out in the business and residential premises of the Dadhas at Chennai as well as at Bangalore. Pursuant to the scheme of amalgamation approved by Gujarat and Madras High Court M/s Tamil Nadu Dadha Pharmaceuticals Limited was converted into M/s. Sun Pharma India Limited shares in the ratio of $:1 viz., for every 4 shares of M/s. Tamil Nadu Dhadha Pharmaceuticals Limited one share of M/s. Sun Pharma India Limited was allotted. The Assessing Officer on the basis of certain loose sheets of paper found at the time of search and on the basis of suspicion came to a conclusion that the scheme of amalgamation was only on paper whereas in practice the shares were sold to M/s. Sun Pharma @ Rs.290 per share. The Assessing Officer consequentially determined the shares held by the appellant as undisclosed income of the appellant. While doing so, the Assessing Officer clubbed the value of shares held by the minor sons in the hands of the appellant and determined the total undisclosed income of the appellant at Rs.3,91,93,881/- and determined the tax thereon at Rs.2,35,04,328/- and passed the order of assessment on 3.7.2008.

3. Against the order of assessment, the assessee preferred an appeal before the learned Commissioner of Income Tax (Appeals). The learned Commissioner of Income Tax (Appeals) following the order in the case of Mahendra Dadha dismissed the assessee's case by his order dated 16.9.2005.

4. Though the order of the Commissioner of Income Tax was served on the assessee as early as 9.11.2005 and the last date for filing of the appeal was 8.1.2006, the assessee had not preferred the appeal in time. The assessee preferred the appeal after a delay of 558 days along with an affidavit explaining the delay for filing

the appeal. The Income Tax Appellate Tribunal considered the matter in respect of the appeal filed by the assessee, after giving opportunity, the Appellate Tribunal after elaborately discussing the affidavit filed by the assessee and taking into consideration all aspects, ultimately rejected the appeal as the appellant has not been given any sufficient reasons or cause for the delay in filing the appeal within the stipulated time. The Tribunal rejected the appellant's appeal. Aggrieved against the same, the above appeal has been filed.

5. The questions of law raised in the appeal are as follows:-

(1) Whether the Income Tax Appellate Tribunal is right in law in not condoning the delay of the appellant in filing the appeal before the Tribunal by not appreciating the bonafide reason (death of the appellants authorised representative) of the appellant for not filing the appeal in time?

(2) Whether the Income Tax Appellate Tribunal is right in law in disposing the appellant appeal on the grounds of limitation alone and not considering and adjudicating the various other grounds filed by the appellant before the Tribunal?

6. At the time of admission, the learned counsel for the appellant vehemently argued that the reasons for rejecting the appellant's appeal in not condoning the delay is legally unsustainable and that a lenient view ought to have been taken by the Tribunal and that the delay was duly explained by the appellant before the authorities.

7. Heard the learned counsel for the appellant. At the outset, a reading of the order of the Tribunal will clearly indicate that the conduct of the appellant either before the Assessing Authority or before the Tribunal was not conducive for even consideration of a remote chance for condoning the delay. In this context, it is necessary to extract the factual finding given by the Tribunal in respect of the reasons for the delay as stated by the appellant and the conclusion arrived at by the Tribunal,:

" In view of the above discussion, it is clear that though the courts have to take a liberal approach while deciding the condonation of delay, at the same time there is always a requirement of sufficient cause to explain the delay. In the absence of sufficient cause delay cannot be condoned merely on equitable ground as held by Hon'ble Supreme Court in P.K. RAMACHANDRAN v. STATE OF KERALA cited supra. It is clear that the assessee has to establish sufficient cause for not filing its appeal in time. In the present case, the appeal has been filed after a delay of 558 days. From the contents of the affidavit and submissions of the learned counsel for the assessee, it is clear that the assessee has not explained the delay for such a long period and

just took the ground of death of her counsel in January 2007, that too after the expiry of about one year from the last date of filing the appeal. Even the assessee failed to explain the sufficient cause or reason by giving necessary details as to how the delay from January 2007 to the date of filing the appeal has occurred. From the facts it seems that the asseessee was negligent by not taking the necessary step for filing the appeal within the time prescribed by the statute and thereby from the conduct of the assessee, it seems that the assessee takes the condonation of delay provision as granted. It is well settled law that the court helps the vigilant and not indolent. We are therefore of the view that the asseesee has not made out sufficient cause for condoning the delay in the present appeal. The cause shown by the assessee is much less than the sufficient cause as to why the appeal was not filed after the expiry of limitation period and even after the expiry of limitation period. Since the assessee has not given any details as to what step she took for filing the appeal within the limitation period or as early as possible therefore, the explanation for delay of 558 days appears to be too insufficient, unsatisfactory and unreasonable for condoning the inordinate delay. From the affidavit it reflects that averments are quite vague as no dates have been specified as to when the papers were handed for drafting an appeal and on what occasion the enquiries were made for preparation and filing of appeal. Moreover, when the assessee never went for signing the appeal, how it could have been filed as presumed by the assessee. Even the conduct of the assessee before this Tribunal is also not appreciable as various notice were sent to the assessee and first time the assessee appeared on 3.3.2008 when the appeal was heard. We therefore decline to condone the delay of 558 days in filing the present appeal. Accordingly, the prayer for condonation of delay is rejected."

8. From a reading of the above, it is clear that the appellant has not explained the cause of delay in filing the appeal, especially when authorised representative viz., representative who was given charge to file the appeal had died exactly one year after the last date of filing of the appeal. When that be so, it is pertinent to point out that actually the filing of the appeal was not done and even after the death of Ashok Kumbat, the assessee had taken more than six months in filing the present appeal. The assessee had neither given any particular or details in the affidavit as on which date the papers were handed over to the counsel for preparing the appeal and on what occasion the assessee enquired about the progress in preparing the appeal and filing the same.

9. As rightly pointed out by the Tribunal, the averments in the affidavit are quite vague. The assessee has also accepted that the assessee never went for signing the appeal then how it could have been filed as presumed by the assessee. The learned counsel for the appellant submits that it was the block assessment and more than ten appeals were sought to be filed and there was a bonafide impression since other appeals having been filed, this appeal ought to have been filed by the authorised

representative is presumed cannot in any way, support the case of the appellant. The finding of the Tribunal is very clear and does not warrant any interference by us.

10. In this context, the appellant wanted to rely on a decision reported in (2008) 219 CTR (Mad) 197 in the case of PAY AND ACCOUNTS OFFICER, CHEPAUK v. INCOME TAX OFFICER. In this case, the appellant is a Government Agency. The Tribunal has specifically noted that the administrative delay i.e. time taken in obtaining necessary sanction from the Government for pursuing the appellate remedy constituted sufficient case for the delay in filing the appeal before the Tribunal and therefore, such delay ought to have been condoned. In that particular case, in the facts and circumstances of the case, the delay was accepted by the Tribunal and it was also accepted by the Honourable Supreme Court since the delay was duly explained. But here the case is different. The appellant has not chosen to give any reason, much less sufficient reason for accepting the delay caused by the appellant. In fact, no details have been given for the delay. Hence, this ruling will not help the contention of the appellant.

11. Next ruling relied upon by the appellant is the decision reported in (1987) 167 ITR 471 (SC) in the case of COLLECTOR, LAND ACQUISITION v. MST. KATIJI AND ORS., wherein the Honourable Supreme Court had explained the fact for sufficient cause for condonation of delay. In this case, considering the fact that the Government is the appellant and also the delay in filing the appeal is only four days, condoned the delay. It is specifically mentioned that the sufficient cause is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice and they may liberal approach only for the reason that every day's delay must be explained, which does not mean that a pedantic approach should be made. The doctrine must be applied in a rational common sense and pragmatic manner. Finally the Supreme Court had rightly held that turning to the facts of that particular case giving rise to that appeal, the Honourable Supreme Court was satisfied that sufficient cause exists for the delay. Therefore, the delay was condoned only after the Court came to the conclusion that the sufficient cause was shown and proved and which has been accepted by the said Court.

12. As far as the present case is concerned, the assessee has never made proper plea for sufficient cause giving evidence and proof beyond reasonable doubt for the delay, that too, for the inordinate delay of 558 days in filing the appeal.

13. The submission of the learned counsel for the appellant that though other block appeals have been filed in time, only, this particular appeal is filed with a delay

and that too after six months from the date of death of authorised representative cannot be a sufficient cause for condoning the delay. Hence, the ruling cited by the learned counsel for the appellant will not applicable to the facts of the present case.

14. At this juncture, we have to be guided by the judgment reported in [1990] 1 LLN 457 in the case of T.N.M. BANK LTD. v. APP. AUTY., SHOPS ACT. In that particular case, the Division Bench of this court has held that,

"..... We are of the view that the question of limitation is not merely a technical consideration. Rules of limitation are based on principles of sound policy and principles of equity. Is a litigant liable to have a Damocles' sword hanging over his head indefinitely for a period to be determined at the whims and fancies of the opponent?"

In that decision, this Court has held that the delay of 285 days in preferring the appeal could not be condoned. It was held that the condonation of delay was not justified on facts and evidence of the case. As rightly pointed out that the Rules of limitation are based on principles of sound public policy and principles of equity. Though there is no presumption that the delay is occasioned deliberately or on account of culpable negligence, if the admitted facts in that case are taken note of, there is no doubt that the delay on the part of the appellant is deliberate and the appellant is clearly guilty of culpable negligence. Such negligent attitude of the appellant was not taken care to preserve the right of appeal and having been slept over for more than 558 days and not explained the delay without any reasonable doubt, the appellant cannot avail sympathy or discretion of this Court.

15. In any way of the matter, the discretion having been rightly refused by the Tribunal, there is no sufficient reason or cause to interfere with the order passed by the Tribunal. Hence, the appeal is dismissed. No costs. Consequently, connected TAMP is also dismissed.

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To

1. The Assistant Commissioner

of Income Tax Officer

Central Circle IV(2)

Chennai 600 034

2. Income Tax Appellate Tribunal,

Chennai 'B' Bench

Chennai