

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : "F" NEW DELHI

BEFORE SHRI G.C. GUPTA, VICE PRESIDENT
AND SHRI J.SUDHAKAR REDDY ACCOUNTANT MEMBER

ITA No: 1197/Del/2011
AY : - 2004-05

Petronet LNG Ltd., vs. DCIT
World Trade Centre Circle 14(1)
1st Floor, Babar Lane New Delhi.
New Delhi.
(PAN AAACP8148D)

(Appellant)

(Respondent)

Appellant by : Shri C.S. Aggarwal, Sr. Advocate,
Shri R.P. Mall, Advocate

Respondent by : Shri Vikram Sahay, Sr. DR

Date of Hearing : 09.7.2015

Date of pronouncement : 30.9. 2015

ORDER

PER J.SUDHAKAR REDDY, ACCOUNTANT MEMBER

This is an appeal file by the assessee directed against the order of the Commissioner of Income Tax (A) dated 28.1.2011 for the assessment year 2004-05 on the following grounds :-

1. *"That the learned Commissioner of Income Tax (Appeals) has erred both on law as well as on facts in dismissing the appeal in limine.*
2. *That the learned Commissioner of Income Tax (Appeals) ought to have condoned the alleged delay in filing the appeal, which appeal had been filed on 30.08.2010 against the order of assessment dated 27.09.2006, which order was served, without notice of demand under section 156 of the Act on assessee on 21.11.2006, despite the fact that, it had not been disputed that no Notice of demand had been served on assessee in*

respect of the said order of assessment and time to file an appeal commences with the service of notice of demand and no valid appeal could be filed without a notice Of) demand.

3. *That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that no appeal could have been filed without a notice of demand and in the absence of notice of demand it was advised by the Chartered Accountant to file appeal as and when, the notice of demand is served. In fact it was only when the Chartered Accountant advised when the matter was reviewed about the pending appeals for the instant assessment year after the order of the Tribunal was received and an application was filed on 13.08.2010 for the service of notice of demand and thereafter an appeal was filed on 30.8.2010 as such it could not be held that the appeal filed was belatedly filed.*
4. *That the learned Commissioner of Income Tax (Appeals) has further failed to appreciate that merely because the assessee didn't request the AO to serve a copy of notice of demand u/s 156 prior to 13.08.2010, could not be regarded as a valid ground for holding that there was a delay in filing appeal and further the purported delay if any occurred could not be condoned.*
5. *That the learned Commissioner of Income Tax (Appeals) failed to appreciate that the Apex Court in the case of Collector, Land Acquisition vs Mst. Katiji And Others reported in 167 ITR 471, wherein it has been held that no prejudice would be caused to entertain an appeal though filed belatedly.*
6. *That the learned Commissioner of Income Tax (Appeals) failed to appreciate that assessee has not slept over the matter and the judgment relied on by him are totally inapplicable.*
7. *That the learned Commissioner of Income Tax (Appeals) further failed to appreciate that the addition made to income of Rs. Rs. 2,33,91,260/- otherwise is untenable in law as had been held by Hon'ble ITA T and Hon'ble HC for the preceding years where similar additions made have been deleted, and as such the addition made of Rs. 2,33,91,260/- as interest income ought to have been deleted . “*

2. Ld. CIT(A) had dismissed the appeal of the assessee by rejecting the application for condonation of delay in filing of the appeal by 47 months.

3. Aggrieved the assessee is in appeal.

4. Ld. Counsel for the assessee Shri C.S. Aggarwal, Senior Advocate, submitted that :

- a) The assessee is a PSU Company;
- b) It was not served with a notice of demand and hence, it did not file the appeal, as it was under bonafide belief that no appeal can be filed without the notice of demand;
- c) The assessee company had not filed appeal within 30 days from the date of service of the order of assessment, since it did not receive the notices of demand and as it was so advised by its Chartered Accountant Shri Mahesh ;
- d) Rule 45, of the Income Tax Rules, prescribes memo of appeal in form No. 35 and requires that this should be accompanied by, the order appealed against and the notice of ;
- e) The period to file the appeal should be taken, as when notice of demand u/s 156 of the Income Tax Act, 1961 is served and that such a notice of demand has not been served till date, despite request made to the AO on 13.8.2010;
- f) The company executive Shri R.K. Goel filed a duly sworn affidavit confirming these facts that the delay of 45 months was caused on account of sufficient cause i.e. non receipt of notice of demand u/s 156;

- g) That there is no finding of the Ld. CIT(A) that the notice of demand was served on the assessee and the period of limitation to prefer an appeal is to be counted after such notice of demand is served;
- h) That the issue involved in the instant appeal is identical to the issue that arose in the preceding assessment years and the Hon'ble ITAT has adjudicated all the issues in favour of the assessee and under those circumstances, no motive can be attributed to the assessee for not filing the appeal in time.
- i) That the assessee had a bonafide belief that the appeal can be filed, only on receipt of the demand notice and such bonafide belief was due to a professional opinion and hence there is reasonable cause for condonation of delay. He relied on the following case laws :-

1. *Surya General Traders vs. Commercial Tax Officer of High Court of Andhra Pradesh*
2. *Church of our lady of Grace vs. Commissioner of Income Tax reported in 34 SOT 315 (Mum.)*
3. *M/s. Mahalakshmi Real Estates vs. Income-tax Officer (ITA No. 991/Hyd/2009)*
4. *Wellworth Shares and stock broking Ltd. vs. ACIT (ITA No. 991/Hyd/2009)*
5. *Dinesh Nagindas vs. CIT (2005) 273 ITR 229*
6. *Auto Centre vs. State of Uttar Pradesh (2005) 278 ITR 291 (All)*
7. *Parijat Chemicals P. Ltd. vs. ITO (1995) 216 ITR 221 (MP)*
8. *Smt. Rani Aggarwal vs. ACIT (2004) 265 ITR 22*
9. *Prem Chand Bansal vs. ITO (1999) 237 ITR 65 (del)*
10. *R. Seshmal vs. ITO 237 ITR 185 (Mad.)*
11. *Prima Paper & Engineering P. Ltd. vs. CIT reported in 221 Taxmann 209 (Bom)*
12. *Improvement Trust, Ludhiana vs. Ujagar Sing & Ors. Civil Appeal No. 2395 of 2008 Supreme Court Judgment dated 9th June, 2010*
13. *M/s. Sartorius Mechatronics India (P) Ltd. vs. ACIT ITA Nos. 982 to 984/Bang/2013 dated 27.3.2015*

5. Ld. DR Shri Vikram Sahay on the other hand opposed the contention of the Ld. Counsel for the assessee and submitted that, this bench of the Tribunal had directed the department to file evidence regarding the service of notice of demand u/s 156 of the Income Tax Act 1961 on the assessee, after verification of the record. He filed copies of letter of ACIT range XIX, New Delhi dated 8.7.2015, wherein a letter of the Deputy Commissioner of Income Tax, Circle XIX, New Delhi dated 8.7.2015 was enclosed and copy of the income tax computation form and notice of demand u/s 156 of the Income Tax Act and copy of speed post acknowledgement date 17.11.2006 was filed. He argued that the AO has confirmed that copy of the assessment order along with the computation form and demand notice showing nil demand was dispatched by speed post on 17.11.2006 to the assessee. He argued that these papers are being filed on the directions of the bench and the entire base on which the assessee rested its case is demolished by these papers. He further submitted as follows :-

- a) At page 43 of the assessee's paper book a letter dated 12th August, 2006 is addressed to Deputy Commissioner of Income Tax requesting for notice of demand alongwith the income tax assessment order and this was filed only on 13th August, 2010. He submits that this shows absolute negligence on the part of the assessee and that no explanation is given at any stage of the proceedings before the CIT(A) on this discrepancy.
- b) The assessment resulted in NIL demand, after adjustment of taxes. Issuing notice of NIL demand cannot be a basis for not filing an appeal.
- c) A delay of four months is an abnormal delay and the assessee was negligent and hence not demonstrated reasonable cause.

- d) The affidavit filed by one of the officer of the company Shri R.K. Goel, Senior Manager mentioned that Shri Mahesh Gupta Chartered Accountant had advised the company to await for the notice of demand and whereas there is no independent confirmation from Shri Mahesh Gupta.
- e) That the assessee states that he has not received notice of demand and that an appeal cannot be filed without a notice of demand and that he has asked for the notice of demand. At the same time, the assessee filed an appeal without notice of demand on 30.8.2010. What the assessee has done now could have been done earlier.

5.1. He distinguished the decisions relied upon by the Ld. Counsel for the assessee and submitted that the issue of condonation of delay is a factual matter and the circumstances on each case are different.

6. In reply the Ld. Counsel for the assessee submitted that the letter at page 43 of the assessee's paper book is not 12th August, 2006 as typed, but was actually, 12th August, 2010 and that this was a typographical error. He submitted that the claim of the D.R. that a notice of demand u/s 156 was issued to the assessee by speed post is not believable. He argued that the acknowledgement which is photocopied on the reverse of notice of demand u/s 156 is no evidence at all. He ridiculed the papers filed by the department and submitted that these do not help the case of the department. He pointed out that in the case of M/s. Sartorius Mechatronics India vs. ACIT, a delay of 1836 days was condoned for reason that the assessee was guided by professional advice and had not filed an appeal. He argued that being a Govt. Organisation a considerate approach has to be shown. He reiterated that there is no reason for the assessee, not to file an appeal.

7. Rival contentions heard. On careful consideration of the facts and circumstances of the case and a perusal of the papers on record and the orders of the authorities below as well as case law cited, we hold as follows.

8. The revenue in this case has stated that the notice of demand u/s 156 was served on the assessee along with the assessment order and computation form. Evidence of dispatch of the same through speed post on 17.11.2006 is produced before us. The assessee denies the receipt of the same, but is unable to controvert the documentary evidence produced by the revenue. When the document is sent by speed post and when the same is not returned to the sender by the postal department, the presumption is that it has been served on the assessee. Hence we presume that the notice of demand u/s 156 was served on the assessee along with the assessment order and computation form. Ld.Counsel for the assessee wanted the Bench not to take cognizance of these documents filed by the Revenue. We are unable to accept this submission. Ld. DR pointed out that these are filed only on the direction of the bench. We see no reason as to why these papers filed by the revenue have to be rejected. Thus the entire basis on which the assessee based his argument for condonation of delay is devoid of merit.

9. Even otherwise if it has to be considered that notice of demand has not been served on the assessee, the assessee filed a letter dated 12th August, 2006 on 18th August, 2010 before AO, requesting for notice of demand. The submission of the Ld. Senior Counsel that the date 12th August, 2006 is a typographical error cannot be accepted. This claim is not supported by any evidence other than circumstantial evidence i.e. the date of filing of the application. We also find that the signature of

Mr. R.K. Goel, Sr. Manager, (F&A) on the letter dated 12th August, 2006 and the affidavit executed on 25th August, 2010 is at variance.

10. The assessee stated in his letter dated 27th January, 2011 addressed to the Commissioner of Income Tax (A) that it was only after it received the order of the Tribunal on 30.7.2010 for the assessment years 2001-02, 2002-03 and 2003-04 the status of the appeal in respect of the instant asstt. Year 2004-05 was examined and it was pointed out that no appeal has been filed, as no notice of demand was received. This statement shows that during the entire interregnum period of more than three years, the assessee has not pursued the matter to obtain the -NIL- notice of demand. This period of delay has not been explained.

11. On the argument that an appeal was not filed on the advise of the Chartered Accountant, the only evidence filed is an affidavit of the employee of the assessee. This is a self-serving document as the Chartered Accountant has not corroborated the same.

12. Under these circumstances, we concur with the view of the Ld. CIT(A) that the assessee could not demonstrate that, it was prevented by sufficient cause, in filing this appeal within the time stipulated under the Act. We do not find any infirmity in the order of the Ld.CIT(A).

13. Coming to the decisions relied upon by the Ld. Senior advocate, we have perused all of them and we hold that each case, is peculiar to its facts and circumstances. In none of the cases it has been laid down that in each and every case, condonation has to be granted as a matter of rule. Unlike in the cases cited, the basic reason cited by the assessee in this case is found incorrect. Hence there is

a factual difference. In this case, the department has produced evidence to prove that notice u/s 156 was dispatched along with the assessment order to the assessee. As already noted the very ground on which the assessee based its entire case for condonation of delay fails and consequently we uphold the order of the first appellate authority and dismiss the appeal of the assessee.

14. In the result the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 30th September, 2015.

sd/-

sd/-

(G.C. GUPTA)
VICE PRESIDENT

(J. SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Dated: the 30th September, 2015

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Copy of the Order forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR
6. Guard File

By order

Dy. Registrar

| Sl. No. | Description | Date |
|---------|--|-----------|
| 1. | Date of dictation by the Author | 9.7.2015 |
| 2. | Draft placed before the Dictating Member | 12.7.2015 |
| 3. | Draft placed before the Second Member | |
| 4. | Draft approved by the Second Member | |
| 5. | Date of approved order comes to the Sr. PS | |
| 6. | Date of pronouncement of order | |
| 7. | Date of file sent to the Bench Clerk | |
| 8. | Date on which file goes to the Head Clerk | |
| 9. | Date of dispatch of order | |