

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.272/Mds/2015

निर्धारण वर्ष / Assessment Year : 2008-09

M/s Rudra Blades and Edges (P)
Ltd.,
36, Josier Street, Nungambakkam,
Chennai - 600 034.

v. The Assistant Commissioner of
Income Tax,
Company Circle V(4),
Chennai - 600 034.

PAN : AAACR 3669 P

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri D. Anand, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri A.B. Koli, JCIT

सुनवाई की तारीख/Date of Hearing : 31.03.2016

घोषणा की तारीख/Date of Pronouncement : 28.06.2016

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) – V, Chennai, dated 31.08.2012 and pertains to assessment year 2008-09.

2. Shri D. Anand, the Ld.counsel for the assessee, submitted that there was a delay of 815 days in filing the appeal. According to

the Ld. counsel, the assessee claimed deduction under Section 80-IB of the Income-tax Act, 1961 (in short 'the Act'). However, the Assessing Officer disallowed the same on the ground that the return of income was not filed within the due date prescribed under Section 139(1) of the Act. The assessee had also filed an appeal before the CIT(Appeals) which was rejected by the impugned order. The assessee had already filed an application before the CBDT on 09.08.2010 for extending the time limit provided under Section 139(1) of the Act. The assessee had also filed an application under Section 154 of the Act before the CIT(Appeals) and the same was heard by the Commissioner on 08.07.2014. However, no order was passed so far. Hence, the assessee filed appeal before this Tribunal against the impugned order. According to the Ld. counsel, the assessee has proceeded in a wrong route by way of filing application under Section 154 of the Act before the Commissioner. Therefore, according to the Ld. counsel, there was reasonable cause in not filing appeal before this Tribunal. The Ld.counsel placed his reliance in CIT v. K.S.P. Shanmugavel Nadar (1985) 153 ITR 596. The Ld.counsel has also placed reliance on the judgment of Madras High Court in Saiyana Warehouse (P) Ltd. v. ACIT (2014) 90 CCH 32, a copy of which is filed by the Ld.counsel.

3. On the contrary, Sh. A.B. Koli, the Ld. Departmental Representative, submitted that the application said to have been filed by the assessee before the CIT(Appeals) under Section 154 of the Act is still pending. In the meantime, the assessee filed appeal before this Tribunal. Moreover, there is no reasonable cause on the part of the assessee for not filing the appeal within the prescribed time.

4. We have considered the rival submissions on either side and perused the relevant material available on record. After the impugned order of the CIT(Appeals), the assessee had filed application under Section 154 of the Act and the same was fixed for hearing on 08.07.2014. The assessee claims that the Commissioner heard the assessee on 08.07.2014. However, no order was passed. The copy of the letter placed on record shows that by a notice dated 01.07.2014, the Commissioner informed the assessee about the fixing of application for hearing on 08.07.2014. Therefore, it is obvious that the assessee with due diligence was prosecuting the matter before the Commissioner under Section 154 of the Act. When the assessee was prosecuting the matter before the Commissioner, this Tribunal is of the considered opinion that

there is no negligence on the part of the assessee. Merely because the assessee opted to file an application under Section 154 of the Act before the CIT(Appeals), it cannot be said that the assessee was not prosecuting the matter with due diligence. Therefore, this Tribunal is of the considered opinion that there was a reasonable cause for not filing the appeal before this Tribunal within the prescribed time. Accordingly, the delay of 815 days is condoned and the appeal is admitted.

5. Now coming to the merit of the appeal, the only objection of the Ld.counsel for the assessee is that penalty under Section 271(1)(c) of the Act was levied on the ground that the assessee claimed deduction under Section 80-IB of the Act by way of belated return. In other words, the return was not filed within the due date provided under Section 139(1) of the Act. According to the Ld. counsel, merely because the assessee has filed the return belatedly that cannot be a reason for levy of penalty under Section 271(1)(c) of the Act. The Ld.counsel further submitted that there is no concealment of income or furnishing of inaccurate particulars, therefore, there is no question of levy of penalty.

6. On the contrary, Sh. A.B. Koli, the Ld. Departmental Representative, submitted that the assessee was expected to file the return of income within the due date provided under Section 139(1) of the Act, but the return was not filed within the due date provided under Section 139(1) of the Act. According to the Ld. D.R., the claim made by the assessee would amount to furnishing of inaccurate particulars. Therefore, according to the Ld. D.R., the Assessing Officer has rightly levied penalty under Section 271(1)(c) of the Act.

7. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee made a claim under Section 80-IB of the Act in the return of income. The Assessing Officer disallowed the claim of the assessee on the ground that the return was not filed within the time provided under Section 139(1) of the Act. The assessee claims that an application was filed before CBDT on 09.08.2010 for extension of time. This application of the assessee dated 09.08.2010 is said to be pending before CBDT. In those circumstances, this Tribunal is of the considered opinion that the claim made by the assessee for deduction under Section 80-IB of the Act would not amount to

furnishing of inaccurate particulars. It is a statutory claim provided under the Act. When the assessee claimed statutory deduction provided under Section 80-IB of the Act that cannot be construed as concealment of any part of income of the assessee. This view of the Tribunal is fortified by the Apex Court in Reliance Petroproducts Pvt. Ltd (2010) 322 ITR 158.

8. In view of the above, this Tribunal is unable to uphold the orders of the lower authorities. Accordingly, the orders of the lower authorities are set aside and the penalty levied by the Assessing Officer as confirmed by the CIT(Appeals) is deleted.

9. In the result, the appeal of the assessee is allowed.

Order pronounced on 28th June, 2016 at Chennai.

sd/-
(ए. मोहन अलंकामणी)
(A. Mohan Alankamony)
लेखा सदस्य/Accountant Member

sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 28th June, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-V, Chennai-34
4. आयकर आयुक्त/CIT, Chennai-III, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.