

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member

I.T.A. No.167/Kol/2020
Assessment Year : 2014-15

Dhanania Rubber Ltd.....Appellant
10, Paymental Garden Lane,
Kolkata – 700015.
[PAN: AAACD9341G]

vs.

PCIT-3, Kolkata..... Respondent

Appearances by:

Shri Anuj Mussadi, AR, appeared on behalf of the appellant.

Shri Rakesh Kumar Das, CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : January 22, 2024

Date of pronouncing the order : February 02, 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 20.03.2019 of the Principal Commissioner of Income Tax [hereinafter referred to as 'Pr. CIT'] exercising his revision jurisdiction u/s 263 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The appeal is time barred by 249 days. A separate application for condonation of delay has been filed, wherein, it has been mentioned that the order of the ld. Pr. CIT was received on 20.03.2019 and the due date for filing the appeal before this Tribunal was 03.06.2019. It has been further mentioned in the application that at that time the company was not having regular external consultants for advising on the income tax matter, therefore, the company could not file the appeal before this Tribunal against the revision order passed by the ld. Pr. CIT. It has, therefore, been requested that the delay in filing the appeal may be

condoned. The assessee, in this respect, has relied upon the decision of the Hon'ble Supreme Court in the case of Collector Land Acquisition vs. Mst. Katiji & Ors. Reported in 167 ITR 471(SC).

3. We have heard the rival contentions and gone through the record. It is pertinent to note here that the assessee company is a corporate entity and it has inhouse consultants and it could have availed the advice of external consultants also, if so required. In this case, the revision order was passed by the Id. Pr. CIT u/s 263 of the Act on 20.03.2019, whereby, the matter was remanded back to the Assessing Officer with a direction to carry out fresh assessment proceedings after making necessary verification regarding correctness of the claim of the assessee in respect of computation of long term capital gain and deduction claimed by the assessee. It was also directed that the Assessing Officer will provide reasonable opportunity of being heard to the assessee and to produce the documents & evidences to substantiate its claim and thereafter the Assessing Officer would pass a fresh assessment order in accordance with law. The assessee had taken a conscious decision of not preferring any appeal against the said order of the Id. Pr. CIT and had chosen to substantiate its claim in the set aside proceedings before the Assessing Officer. Thereafter, the assessee duly participated before the Assessing Officer in the set aside proceedings and a fresh assessment order was passed by the Assessing Officer after considering the submissions of the assessee on 30.12.2019. Since, the Assessing Officer did not get satisfied with the explanation of the assessee, therefore, the Assessing Officer made the addition on account of claim of deduction of Rs.1,20,28,262/- and further the Assessing Officer has also enhanced the long-term capital gains. It is when the fresh assessment order u/s 143(3) r.w.s 263 of the Act has been passed

by the Assessing Officer and the assessee could not get any favour in fresh assessment proceedings, that the assessee preferred the appeal against the impugned revision order of the ld. Pr. CIT passed u/s 263 of the Act on 07.02.2020. This is entirely an afterthought of the assessee. We have been apprised that the assessee, on the other hand, has already filed an appeal u/s 250 of the Act before the Commissioner of Income Tax (Appeals) against the fresh assessment order passed by the Assessing Officer. The assessee had taken a conscious decision not to prefer appeal against the order of the ld. Pr. CIT and as advised by his inhouse financial consultants and external consultants, had chosen to participate and pursue his case in the set aside assessment proceedings. Only because the assessee could not get a favourable order in the set aside assessment proceedings, that does not give any right or cause of action to the assessee to file an appeal against the original revision order passed u/s 263 of the Act which by the time has been time barred by 249 days. It is neither a case of any inadvertent delay nor it is a case, where, the assessee was prevented by any sufficient cause from filing the appeal against the revision order of the ld. Pr. CIT before this Tribunal. The assessee has already chosen an alternate remedy of contesting the addition on merits and therefore, no prejudice has been caused to the assessee at this stage. Since, the assessee had taken a conscious decision of not to file any appeal against the revision order passed by the ld. Pr. CIT u/s 263 of the Act, we do not find any reason at this stage to condone the delay in filing the present appeal which is nothing but an afterthought action of the assessee. If the assessee is allowed to file appeal at his will irrespective of the limitation period then there will not be any finality to any litigation. The appeal of the assessee is, therefore, dismissed being barred by limitation.

4. In the result, the appeal of the assessee stands dismissed.

Kolkata, the 2nd February, 2024.

Sd/-

[गिरीश अग्रवाल /**Girish Agrawal**]
लेखा सदस्य/**Accountant Member**

Sd/-

[संजय गर्ग /**Sanjay Garg**]
न्यायिक सदस्य/**Judicial Member**

Dated: 02.02.2024.

RS

Copy of the order forwarded to:

1. Dhanania Rubber Ltd
2. PCIT-3, Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches