(1967) 03 MAD CK 0077

In the Madras High Court

Case No : Tax Case Petition No. 59 of 1964 (Revision No. 26)

Bay's Medicals APPELLANT

Vs

The State of Madras RESPONDENT

Date of Decision : 28-03-1967

Acts Referred:

Citation : (1968) ILR (Mad) 760 : (1967) 80 LW 457 : (1967) 20 STC 259

Hon'ble Judges : Veeraswami, J;Ramaprasada Rao, J

Bench : Division Bench

Advocate : C.S. Chandrasekhara Sastry, C. Venkataraman and G. Subramaniam, for the Appellant; K. Venkataswami, for Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Veeraswami, J.—The only point in this Tax Case is whether the Tribunal was right in its view that there was no sufficient cause shown to condone the delay. The assessment order was dated 10th August, 1961, and was actually served on the assessee on 17th August, 1961. The appeal should be filed within thirty days, that is, on or before 16th September, 1961. Actually, it was filed on 17th'' February, 1962, after a delay of 154 days. The ground on which the assessee wanted condonation was that during the period covered by the delay, he was prosecuting another remedy. He was assessed to a tax of Rs. 7,885.30. He had paid a sum of Rs. 3,799.03. As regards the balance, he claimed that his principal had paid a sum of Rs. 4,005.82 and that this should be adjusted. On that basis the assessee sent by cheque the balance of Rs. 80.45. This was on 8th September, 1961. The Joint Commercial Tax Officer, however, referred to the Commercial Tax Officer, Salem, and it was only on 14th February, 1962, or so, the assessee was informed that the adjustment asked for by him could not be made. It was thereafter the assessee set about filing an appeal, but he found that the assessment order originally served on him has not been signed by the assessing authority, and to get it rectified, he had to delay the filing of the appeal further. The Tribunal''s view was that the facts do not constitute a sufficient, cause to excuse the delay.

2. We are unable to accept that conclusion. Whether the assessee was entitled to the adjustment that he asked for, is a different matter. But if he was bonafide prosecuting his request for adjustment, which if granted, would result in no further liability, we do not see why the circumstance will not constitute a sufficient cause. The Tribunal has not stated that the assessee was not bonafide in making the request for adjustment and waiting for a final reply in the matter. The Tribunal itself notes the fact that the original order of assessment was not signed by the assessing authority. That being the case, we are satisfied that the Tribunal should have condoned the delay. The appeal filed before the Tribunal will, therefore, be treated as having been filed in time after the condonation of delay.

3. The petition is allowed and the order of the Tribunal is set aside. The appeal is remitted to the Tribunal for fresh disposal on its merits. The petitioner is entitled to his costs ; Counsel''s fee Rs. 100.