(2015) 06 BOM CK 0276

In the Bombay High Court

Case No : Income Tax Appeal No. 1522 of 2013

Kunal S. Surana APPELLANT

Vs

Income Tax Officer (14(1)(3)) RESPONDENT

Date of Decision : 16-06-2015

Acts Referred:
Income Tax Act, 1961 — Section 260-A

Citation : (2015) 06 BOM CK 0276

Hon'ble Judges : M.S. Sanklecha, J;N.M. Jamdar, J

Bench : Division Bench

Advocate : B.M. Chatterji, Senior Counsel i/by S.H. Sharma, for the Appellant; P.C. Chhotaray, Advocates for the Respondent

Judgement

1. This appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 19 April 2013 passed by the Income Tax Appellate Tribunal (the Tribunal) passed for Assessment Year 2006-07.

2. The appeal is admitted on the following substantial question of law :-

Whether in the facts and circumstances of the case, was the Tribunal justified in upholding the order of Commissioner of Income Tax (Appeals) refusing to condone the delay on the part of the appellant in filing an appeal ?

3. At the request of the counsel, the appeal itself is taken up for final disposal.

4. For the Assessment Year 2006-07 the appellant received an assessment order on 6 January 2009. If the appellant was aggrieved by the assessment order, he was required to file an appeal to the Commissioner of Income Tax (Appeals) on or before 5 February 2009. However, the appellant filed the appeal before the Commissioner of Income Tax (Appeals) only on 5 June 2009. Thus, there was a delay of four months in filing the appeal. In his application for condonation of delay, the appellant relied upon the communication of the Chartered Accountant who was attending to the appellant''s affairs. Therein the Chartered Accountant pointed out that the delay in filing the appeal was on his account. This was due

to lapse on his part that there was a delay in filing the appeal. However, the Commissioner of Income Tax (Appeals) did not accept the explanation of the Chartered Accountant and dismissed the appeal on the ground of being time barred.

5. On further appeal, the Tribunal upheld the order of the Commissioner of Income Tax (Appeals). This, in spite of the fact that the Chartered Accountant attending to the appellant''s affairs had filed an affidavit before the Tribunal pointing out the circumstances leading to delay and taking responsibility for the delay in filing the appeal before the Commissioner of Income Tax (Appeals). The Tribunal was not satisfied with the affidavit filed and refused to interfere with the order of the Commissioner of Income Tax (Appeals) and dismissed the appeal. The merits of the dispute was not touched and appeal was dismissed on account of being time barred before the Commissioner of Income Tax (Appeals).

6. Undisputedly, there has been a delay on the part of the appellant in filing the appeal. The Chartered Accountant attending to the appellant''s affairs, has owned up before the Commissioner of Income Tax (Appeals) as well as before the Tribunal that the delay was entirely due to a mistake on his part, inasmuch as, after having received the papers from the appellant there was a delay in preparing and filing the appeal before the Commissioner of Income Tax (Appeals). In these facts, we are of the view that, there is no reason to disbelieve the Chartered Accountant and the delay ought to have been condoned as the appellant should not suffer on account of the Chartered Accountant, although the appellant should have been vigilant and followed up with his Chartered Accountant.

7. In the above view, we set aside the impugned order of the Tribunal dated 19 April 2013 and restore it to the Tribunal for fresh disposal on merits. We are inclined to set aside the impugned order of the Tribunal for fresh consideration. The learned senior counsel for the appellant states that, as per the instructions available with him, the amount due under the assessment order dated 16 December 2008 for the Assessment Year 2006-07 has been paid to the revenue.

8. In the above circumstances, we set aside the impugned order dated 19 April 2013 and restore it to the Tribunal for fresh disposal. However, in case the appellant has not/does not deposit the amounts due under the assessment order dated 16 December 2008 along with the interest imposed before the date of the hearing fixed by the Tribunal, then in that event, the Tribunal would be at liberty to dismiss the appeal without going into the merits of the appeal. All contentions are left open.

9. Appeal disposed of in above terms. No order as to costs.

