(2010) 03 P&H CK 0051

In the Punjab And Haryana At Chandigarh

Mrs. Amrita Chadha APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 02-03-2010

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35, 35B
Income Tax Act, 1961 — Section 143, 249, 260A
Limitation Act, 1963 — Section 5

Citation : (2010) 03 P&H CK 0051

Hon'ble Judges : M.M. Kumar, J;Jitendra Chauhan, J

Bench : Division Bench

Judgement

M.M. Kumar, J.—By this order we propose to dispose of IT Appeal Nos. 112 and 114 to 118 of 2010, which have been filed u/s 260A of the Income Tax Act, 1961 (for brevity, the Income Tax Act) challenging various orders passed by the Income Tax Appellate Tribunal, Chandigarh Bench A, Chandigarh (for brevity, the Tribunal). The only question of law which arises for determination of this court in these appeals is as under:

Whether the delay in filing of the appeal beyond the period of 120 days prescribed by Section 260A(2)(a) of the Income Tax Act, 1961, could be condoned by entertaining an application u/s 5 of the Limitation Act, 1963?

2. Along with the appeals, applications invoking the provisions of Section 5 of the Limitation Act, 1963 (for brevity, the Limitation Act), seeking condonation of delay in filing the appeals, have also been filed.

3. The aforesaid question is no longer res tntegra as Hon''ble the Supreme Court in the case of CCE v. Hongo India (P) Ltd. (2009) 5 SCC 791, while interpreting the provisions of the Central Excise Act, 1944 (for brevity, the Excise Act) has laid down that it is a complete code by itself which alone is to govern the matters provided by that Act. It has further been held that in the presence of special law providing for limitation with regard to filing of appeal, the court could examine the extent of exclusion of Limitation Act by such special law. On examination of

the language used in Sections 35, 35B, 35EE, 35G and 35H of the Excise Act, it has been concluded in paras 32 and 33 that the provisions of Limitation Act were not to apply. The view expressed by Hon''ble the Supreme Court in the aforesaid paras reads thus:

32. As pointed out earlier, the language used in Sections 35, 35B, 35EE, 35G and 35H makes the position clear that an appeal and reference to the High court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only upto 30 days after expiry of 60 days which is the preliminary limitation period for preferring an appeal. In the absence of any Clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days.

33. Even otherwise, for filing an appeal to the CIT, and to the Tribunal as well as revision to the Central Government, the legislature has provided 60 days and 90 days respectively, on the other hand, for filing an appeal and reference to the High Court larger period of 180 days has been provided with to enable the CIT and the other party to avail the same. We are of the view that the legislature provided sufficient time, namely, 180 days for filing reference to the High Court which is more than the period prescribed for an appeal and revision.

4. When we examine the provisions of the Income Tax Act, the position is no different than the one prevailing under the Excise Act. In that regard it would be profitable to refer to the unnumbered second proviso of Section 143, Section 249(3) and Section 260A(2)(a) of the Income Tax Act, which reads thus:

Second unnumbered proviso of Section 143(1)

Provided further that no intimation under this Sub-section shall be sent after the expiry of one year from the end of the financial year in which the return is made.

Section 249(3)

The Commissioner (Appeals) may admit an appeal after the expiration of the said period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

Section 260A

Appeal to High Court. (2)(a)- The Chief CIT or the CIT or an assessee aggrieved by any order passed by the Tribunal may file an appeal to the High Court and such appeal under this Sub-section shall be-

(a) filed within one hundred and twenty days from the date on which the order appealed against his received by the assessee or the Chief CIT or CIT;

5. A perusal of above quoted provisions would show that wherever the legislature desires to provide for condonation of delay, a specific provision has been made in the Act and, therefore, if no such provision has been made, then no application u/s 5 of the Limitation Act could be filedas the Act itself is a complete code like Excise Act, which has been considered by their Lordships of Hon''ble the Supreme Court in Hongo India (P) Ltd. (supra). The reasoning adopted by Hon''ble the Supreme Court in the case of Hongo India (P) Ltd. (supra) is fully applicable to the question raised in the present appeals. Therefore, we are of the view that the applications seeking condonation of delay filed u/s 5 of the Limitation Act cannot be accepted.

6. For the reasons aforementioned, the applications filed u/s 5 of the Limitation Act seeking condonation of delay in filing the appeals are dismissed. Consequently, these appeals also fail and the same are dismissed being time-barred.

The office is directed to place a photocopy of this order on the file of each appeal.

