(2006) 04 MAD CK 0255

In the Madras High Court

Case No : Writ Petition No''s. 11507 to 11509 of 2006

Ravi Prakash Khemka, Shivani Devi and Ritu Devi — APPELLANT

Vs

Income Tax Appellate Tribunal 'B' Bench and Deputy Commissioner of Income Tax — RESPONDENT

Date of Decision : 24-04-2006

Acts Referred:
Income Tax (Appellate Tribunal) Rules, 1963 — Rule 24

Citation : (2007) 209 CTR 342 : (2007) 288 ITR 362 : (2007) 164 TAXMAN 431

Hon'ble Judges : K. Mohan Ram, J

Bench : Single Bench

Advocate : R. Sivaraman, for the Appellant; Narayanasamy, for the Respondent

Final Decision : Allowed

Judgement

K. Mohan Ram, J.—Mr. Narayanasamy, takes notice for the respondents. By consent of Counsel on either side, the main Writ Petitions are

taken up for final disposal.

2. The above Writ Petitions have been filed for the issue of Writ of Certiorarified Mandamus calling for the records of the first respondent in

M.P.Nos.263,261,262/MDS/ 2005 dated 25.11.2005 and quash the orders passed by the first respondent and consequently direct the first

respondent to hear the appeals in I.T.A.T.Nos.328,323,324/ MDS/2000, by giving opportunity to the Petitioners.

3. The short facts that are necessary for the final disposal of the Writ Petitions are as follows ::

The appeals filed by the Petitioners/Appellants in the above Writ Petitions in I.T.A.T.Nos.328,323,324/MDS/2000 were posted for final hearing

before the first respondent Tribunal on 21.06.2005. The authorized representative/ Advocate of the Petitioners by letter dated 20.06.2005,

addressed to the Deputy Registrar, Appellate Tribunal Income Tax, Chennai, sought for adjournment on the ground that he had to attend a family

function in his native place Kumbakonam and hence he was not in a position to attend the hearing on 21.06.2005. But the first respondent Tribunal

decided the appeals on merits. Thereafter, the Petitioners filed M.P.Nos.263,261,262/MDS/2005, under Rule 24 of the Income Tax Appellate

Tribunal Rules, 1963 to set aside the exparte orders passed by the Tribunal and to restore the appeals and hear the same and dispose of them on

merits, after giving opportunity to the appellants. But the said petitions were dismissed by the first respondent Tribunal by its order dated

25.11.2005, which order is impugned in the above three Writ Petitions.

3. The learned Counsel for the petitioners brought to the notice of this Court, the proviso to Rule 24 of the Income Tax Appellate Tribunal Rules,

1963, which reads as follows::

Where on the day fixed for hearing or on any other date to which the hearing may be adjourned, the appellant does not appear in person or

through an authorized representative when the appeal is called on for hearing, the Tribunal may dispose of the appeal on merits after hearing the

respondent;

Proviso:

That when an appeal has been disposed of as provided above and the appellant appears afterwards and satisfies the Tribunal that there was

sufficient cause for his non-appearance, when the appeal was called on for hearing, the Tribunal shall make an order setting aside the exparte order

and restoring the appeal.

4. Relying upon the said Proviso to Rule 24, the learned Counsel submitted that even though the Tribunal may dispose of the appeal on merits

exparte, when the appellants appear afterward and satisfy the Tribunal that there was sufficient cause for their non appearance when the appeal

was called for hearing, the Tribunal shall make an order setting aside the exparte order and restoring the appeal. According to the learned Counsel

for the petitioner, the authorised representative had, in time, sent the letter seeking for adjournment of the hearing fixed on 21.06.2005. But the first respondent Tribunal without considering as to whether there was sufficient cause for the non-appearance of the appellants or their authorized

representative, has rejected the petitions filed for setting aside the exparte orders.

5. Mr. Narayanasamy, learned Counsel for the Income Tax Department fairly submits that the Tribunal ought to have considered the application in

the light of the proviso contained in Rule 24 of the Income Tax Appellate Tribunal Rules, 1963. But however submits that since the order of the

Tribunal is on merits, and the Petitioners have no case on merits, this Court may not interfere with the order passed by the Tribunal.

6. A reading of Rule 24 of the Income Tax Appellate Tribunal Rules, 1963 clearly shows that even though the exparte order, on merits, could be

passed by the Tribunal in the absence of the appellants, when an application is filed invoking the proviso to Rule 24 of the Income Tax Appellate

Tribunal Rules, 1963, setting out sufficient cause for the non-appearance of the appellants or their authorized representative, the Tribunal shall, on a

consideration of the cause shown, set aside the exparte order, restoring the appeal and hear it on merits.

7. In my considered view, the Tribunal has not applied its judicial mind to the facts of this case. Admittedly, the authorized representative of the

appellants has submitted a letter seeking for adjournment, in time. When the proviso to Rule 24 only speaks of reasonable cause being shown, the

Tribunal should have considered the reasonable cause, instead of considering the merits of the case. What the Petitioners want is only an

opportunity to put-forth their case, on merits and by setting aside the exparte order, no harm is going to be caused to the respondents. In my

considered view, sufficient cause has been shown by the appellants for the non-appearance before the Tribunal, on the date of hearing.

Considering the same, the Tribunal ought to have allowed the petitions. Therefore, the impugned Order of the Tribunal is set aside and the Tribunal

shall restore the appeals I.T.A.T.Nos.328,323,324/MDS/2000 and fix a fresh date of hearing for the disposal of the appeals and on receipt of the

hearing notice, the Petitioners shall appear before the Tribunal on the date fixed for the hearing of the appeals, either in person or through their

representative, without fail, and cooperate with the Tribunal in disposal of the appeals, without seeking further adjournment. With the above direction, the Writ Petitions are allowed. No costs. Consequently, W.P.M.P.Nos.13103 to 13105/2006 are closed.

