

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 23.09.2014

CORAM

**THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE G.M.AKBAR ALI**

**T.C.A. NOS. 283 TO 288 OF 2014
AND
M.P. NOS. 1 OF 2014**

M/s.Centre for Individual
& Corporate Action (CICA)
T-73, Anna Nagar
Chennai 600 040.

.. Appellant in all the appeals

- Vs -

The Asst. Commissioner of Income Tax
Business Circle – XIII
Chennai.

.. Respondent in all the appeals

Appeals filed against the order dated 23.7.2012 passed by the Income Tax Appellate Tribunal, 'C' Bench, Chennai, in ITA Nos.880 to 885/Mds/2012 for the assessment years 1995-1996 to 2000-2001.

For Appellant : Mr. M.P.Senthil Kumar

For Respondents : Mr. J.Narayanasamy

COMMON JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

These appeals are preferred by the assessee against the order dated 23.7.2012 passed

by the Income Tax Appellate Tribunal, 'C' Bench, Chennai, in ITA Nos.880 to 885/Mds/2012 for the assessment years 1995-1996 to 2000-2001.

2. The following substantial questions of law have been framed for consideration in these appeals :-

“a) Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in law in dismissing the appeals filed by the assessee as time barred?

b) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the deduction claimed by the appellant u/s 40 (b) of the Income Tax Act, 1961 is not justifiable?

c) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the appellant is not entitled to make a claim for deduction in the remand assessment proceedings even if the appellant is statutorily entitled to such claim to arrive at a correct assessable income?”

3. The appellant/assessee is engaged in supply and training of manpower for corporate sector. The appellant received professional charges for various technical services rendered by it for the assessment years 1995-1996 to 2000-2001, in all six assessment years. The assessment was completed under Section 143 (3) r/w 147 of the Income Tax Act by the Assessing Officer and the claim of expenditure at 98% of the service charges was rejected and expenditure to the extent of 20% was allowed. Aggrieved against the said order, the assessee preferred appeal to the Commissioner of Income Tax (Appeals), who estimated the assessee's

net profit at 25% of the service charges received. On further appeal to the Tribunal in ITA Nos.2164 and 2165/Mds/2003, 393 to 396/Mds/2003, the Tribunal set aside the order of the Commissioner of Income Tax (Appeals) and directed the Assessing Officer to assume the net profit at 40% of the gross professional receipts and not on all the credit entries appearing in the bank statement.

4. On remand, in the course of assessment proceedings under Section 143 (3) r/w 256, the appellant claimed deduction of expenditure towards remuneration to partners and interest on capital accounts. The Assessing Officer completed the assessment vide order dated 31.01.2006 and arrived at the net taxable income by treating 40% of total consulting charges as net profit of the appellant and allowed interest on capital account of the partners. However, the Assessing Officer disallowed the assessee's claim for expenditure towards payment of remuneration to partners under Section 40 (b).

5. Aggrieved against the above order, the assessee preferred an appeal to the Commissioner of Income Tax (Appeals) against all the orders disallowing the assessee's claim for expenditure towards payment of remuneration to the partners under Section 40 (b). However, the Commissioner of Income Tax (Appeals) dismissed the appeals by order dated 29.08.2006, confirming the order of the Assessing Officer.

6. Aggrieved by the said order of the Commissioner of Income Tax (Appeals), the

assessee filed six appeals before the Tribunal with a delay of 2053 days and the Tribunal, vide common order dated 23.7.12, framed the following two questions for consideration :-

“i) Whether condonation of 2053 days in filing the appeals before the Tribunal is justified?

ii) Whether the appellant is entitled to claim deduction under Section 40(b) as claimed?”

7. The Tribunal took up all the matters together and after setting out the details of the claim and the reasons as submitted by the assessee for condonation of delay, rejected the same holding that the explanation submitted by the assessee is not satisfactory and there are no sufficient particulars. The Tribunal while holding that there is no ground for condonation of delay, further proceeded to dispose of the appeals on merits and dismissed the same. Having dismissed the appeals of the assessee on the question of condonation of delay, the further order of the Tribunal dismissing the appeals of the assessee on merits is now challenged before this Courts by the assessee by taking similar grounds as stated above.

8. Heard Mr.Senthil Kumar, learned counsel appearing for the appellant/assessee and Mr.Narayanasamy, learned standing counsel appearing for the respondent/Department.

9. The net taxable income differs for each assessment year and this Court is not concerned with the said aspect. Though three questions of law have been raised for consideration in these appeals, in view of the order that is to be passed in this appeals, this

Court is not going into any of the question of law at the present time.

10. Even at the very outset we find that the procedure adopted by the Tribunal is highly prejudicial to the interest of the appellant/assessee inasmuch as the Tribunal having decided not to proceed with the matter on the ground of condonation of delay, cannot unilaterally decide the appeals on merits, more so when the appellant/assessee was not given proper opportunity to contest the matter in the main appeals on merits. The order of the Tribunal is also not in consonance with Section 253 (5) of the Income Tax Act. Section 253 (5) of the Income Tax Act mandates that an appeal should be admitted before ever an order is passed on merits. Once the appeal itself is not entertained, the question of going into the merits of the matter does not arise. We, therefore, find that the order of the Tribunal deciding the appeals of the assessee on merits, after dismissing the appeal itself on the question of delay, is an error apparent on the face of the record and that the order passed is without jurisdiction since, when there is no appeal, there is no question of deciding the issue raised in the appeal on merits.

11. The above view of ours is fortified by the decision of the Gauhati High Court in the case of ***Williamson Financial Services Ltd. - Vs – Commissioner of Income Tax & Anr. (2003 (262) ITR 595)***.

12. In view of the reasons above mentioned, we set aside the order of the Tribunal and

remand the matters back to the Tribunal for reconsideration. Accordingly, the matters are allowed by way of remand to the Tribunal. Consequently, connected miscellaneous petitions are closed. It is needless to add that while dealing with the condonation of delay issue, the Tribunal shall keep in mind the proceedings which the assessee first went through even before this order, which goes to show that the assessee has been acting bona fide and diligently pursuing the matter before the appropriate forum.

(R.S.J.) (G.M.A.J.)

23.09.2014

Index : Yes/No

Internet : Yes/No

GLN

To

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