IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT

D.B. INCOME TAX APPEAL NO.228/2010

M/s MEHRU ELECTRICAL & ENGG.(P) LIMITED
Vs.
THE COMMISSIONER OF INCOME TAX, ALWAR & ORS.

DATE:27.04.2012

HON'BLE MR. JUSTICE NARENDRA KUMAR JAIN-I
HON'BLE MR. JUSTICE MAHESH BHAGWATI

Mr. R.K. Agarwal, Senior Counsel assisted by
Mr. Naresh Gupta, for the appellant.
Ms. Parinitoo Jain, for the respondents.

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At the request of the parties, arguments were heard and the appeal is being disposed off finally.

2. Assessee/appellant has preferred this appeal under Section 260A of the Income Tax Act, 1961 against the order dated 26.02.2010 passed by the Income Tax Appellate Tribunal, Jaipur Bench 'B', Jaipur(hereinafter referred to as 'the Tribunal'), whereby the Tribunal allowed the appeal filed by the Revenue against the order dated 30.12.2008 passed by the Commissioner of Income-Tax(Appeals), Alwar.

3. Submission of the learned counsel for appellant is that appeal before the Tribunal

was fixed on 09.02.2010. Counsel for the assessee had moved an application for adjournment of the case, in advance, on 08.02.2010 on the ground that he is going to Mumbai for some urgent work. The case was taken up on 09.02.2010. Application for adjournment, filed on behalf of Counsel for assessee, was rejected and the case was heard ex-parte and appeal of the Revenue was allowed. He received a copy of order dated 26.02.2010 on 26.03.2010 and preferred the appeal before this Court. He submitted that from para 2 of the impugned order, it is clear that adjournment application was rejected only on the ground that a last opportunity was granted to him to argue the appeal. He submitted that Counsel for assessee had to go outside Jaipur due to some urgent work, but the said request was not considered and by a non-speaking order, application was rejected. He also submitted that even if a last opportunity was granted on last date, it does not mean that on sufficient ground the case can not be adjourned again. Since, it is matter where tax effect is more than Rs. 46 lacs, therefore, it was incumbent on the part of the Tribunal to adjourn the case. He, therefore, submitted that order of the

Tribunal may be set aside and the case may be remitted back to the Tribunal for decision on merits, afresh.

4. Learned counsel for the Revenue defended the impugned order of the Tribunal and submitted that Counsel for assessee was avoiding the hearing and a last opportunity was granted to him, but again he sent an application for adjournment of the case, therefore, the Tribunal rejected the application and heard the Counsel for the Revenue and rightly decided the appeal. Therefore, no interference in the order of the Tribunal is called for by this Court.

5. We have considered the submissions of the learned counsel for the parties and examined the impugned order and original file of the Tribunal, which was summoned by us.

6. The substantial question of law, which arises for our consideration is "Whether, if a case is adjourned by giving a last opportunity to the Counsel for assessee, the same can be adjourned or not, again on the date fixed, if sufficient or reasonable cause exists on that day?"

7. Undisputed facts of the case are that appeal before the Tribunal was fixed on 11.01.2010 and at the request of the authorized representative, hearing of the case was adjourned to 09.02.2010, giving him a last opportunity. Counsel for assessee moved an application for adjournment of the case on 08.02.2010 as he was going to Mumbai for some urgent work. The appeal was taken up by the Tribunal on 09.02.2010 and the application was rejected. Order-sheet dated 09.02.2010 of the Tribunal shows that it is a rubber stamped order-sheet, which has been filled in. It does not show any reason for rejecting the application. It also does not disclose as to whether appeal has been heard and judgment/order has been reserved or next date is fixed in the case. Impugned order has been passed on 26.02.2010, but in the original file of the Tribunal, it is mentioned that date of pronouncement is 12.03.2010. In another rubber stamped order-sheet, the date 26.02.2010 is filled in blank, which is not legible. However, from para 2 of the impugned order dated 26.02.2010, it reveals that a last opportunity was granted to the learned authorized representative of the assessee for arguments in the appeal and the case was

fixed for hearing on 09.02.2010. The adjournment application dated 08.02.2010 was rejected because it was clearly mentioned on the last hearing that both the parties are being given the last opportunity.

8. From the proceedings of the Tribunal dated 11.01.2010, it is clear that last opportunity was given and the case was adjourned for 09.02.2010. Application for adjournment was filed on 08.02.2010, which was put up for consideration before the Tribunal on 09.02.2010. From the application, it appears that Counsel for assessee had to go to Mumbai due to some urgent work. Application was available on record. No one was present on behalf of assessee. Learned Tribunal, in absence of Counsel for assessee, rejected the adjournment application. Ordinarily, it is not incumbent on the part of the Tribunal to adjourn the case again when a last opportunity had already been granted to the Counsel for assessee, however, there may be number of circumstances where adjournment becomes necessary, in the interest of justice. If Counsel for assessee had to go for some urgent work to Mumbai and an application for adjournment was moved in advance, then in the interest of justice, a

short adjournment should have been granted. If number of opportunities had already been afforded to the Counsel for assessee, then adjournment could have been granted, on payment of cost. The Tribunal has not assigned any reason as to whether reason mentioned in the application for adjournment, constituted sufficient cause for adjournment or not? Even if, a last opportunity is granted and case is fixed for hearing and sufficient cause is shown on the date fixed for hearing, then the case can be adjourned and it should be adjourned, in the interest of justice.

9. In these circumstances, we are of the view that the Tribunal committed an illegality in rejecting the application for adjournment and in deciding the appeal, ex-parte, without hearing the learned counsel for assessee, in the facts and circumstances of the present case and order of the Tribunal deserves to be set-aside on this ground alone and substantial question of law, formulated above, is liable to be answered and is hereby answered in favour of the assessee.

10. Consequently, the appeal is allowed. Impugned order of the Tribunal dated

26.02.2010 is set-aside and the case is remitted back to the Tribunal for decision on merits, afresh. However, cost of Rs.21,000/- (Rs. Twenty one thousand) is imposed on the assessee. If the amount of cost is deposited in the Department within a period of four weeks and receipt thereof is furnished in the Tribunal, then the Tribunal will decide the matter afresh on merits, after hearing both the parties, otherwise this appeal will be deemed to have been dismissed and no further opportunity will be granted to the assessee.

11. Parties are directed to appear before the Income Tax Appellate Tribunal, Jaipur Bench 'B', Jaipur on 28.05.2012. No fresh notice in this regard will be issued to the parties by the Tribunal.

12. Registry is directed to send the record of the Tribunal back, immediately.

(MAHESH BHAGWATI),J. (NARENDRA KUMAR JAIN-I),J.

/KKC/

Certificate:

All corrections made in the judgment/order have been incorporated in the judgment/order being emailed.

KAMLESH KUMAR
P.A.