

2024 LiveLaw (SC) 44

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

PAMIDIGHANTAM SRI NARASIMHA; J., ARAVIND KUMAR; J.

JANUARY 04, 2024

**CIVIL APPEAL NOS. 267-268 of 2024 (Arising out of SLP (C) Nos. 5285-5286 of 2018)
M/S HERBICIDES INDIA LIMITED versus THE ASSISTANT COMMISSIONER OF INCOME TAX**

Condonation of Delay - Taxpayer is entitled to hearing on the merits, if appeals were dismissed by the High Court due to a delay in filing the paper-book.

WITH CIVIL APPEAL NOS. 269-270 OF 2024 (Arising out of SLP (C) Nos. 5287-5288 of 2018)

(Arising out of impugned final judgment and order dated 10-05-2017 in DBITA No. 816/2008 24-10-2017 in DBCR No. 44/2017 passed by the High Court of Judicature for Rajasthan at Jaipur)

For Petitioner(s) M/S. Manoj Swarup and Co., AOR Mr. Manoj Swarup, Adv. Mr. Abhishek Swarup, Adv. Mr. Chetan Sharma, Adv.

For Respondent(s) Mr. N Venkatraman, A.S.G. Mr. Arijit Prasad, Sr. Adv. Mr. Raj Bahadur Yadav, AOR Mr. V Chandrashekhara Bharathi, Adv. Mr. Rupesh Kumar, Adv. Mr. Pramod Kumar, Adv.

ORDER

Leave Granted.

The orders impugned in these two appeals came to be dismissed by the High Court of Rajasthan without adjudication on merits. For the reason that we indicate herein, we have set aside the orders passed by the High Court and restored the appeals for proper adjudication and determination on merits. There is no precedent that we lay down in these appeals. Facts that speak for themselves, they are as follows.

For Assessment Year 2001-2002, the Assessing Officer passed an order dated 10.03.2004 disallowing the allowance of interest. The appeals against the said order were dismissed by the Commissioner of Income Tax on 18.09.2007 and by the Income Tax Appellate Authority on 20.06.2008. The assessee, therefore, approached the High Court by filing Appeal No. 817 of 2008.

The High Court had initially passed an order on 31.01.2012, directing the Appellant to file the paper books within a period of 15 days, failing which the appeal was to be dismissed without reference to the Court. As the paper books were not filed within the prescribed time, the Registrar vide his order dated 30.04.2012 proceeded to record that the appeals stood dismissed as per order dated 31.01.2012. The application for restoration of the appeal was dismissed by the High Court on 25.02.2015. Even the review against the said order came to be dismissed on 26.04.2017. Thus, the first set of civil appeals are against orders dated 25.02.2015 and 26.04.2017.

The other connected appeal also arose from similar proceedings, but related to Assessment Year 2002-2003. In this the Assessing Officer had similarly disallowed the allowance by order dated 16.02.2005. The appeal by the assessee was allowed by the Commissioner of Income Tax on 28.12.2007. The Income Tax Appellate Tribunal however allowed the Revenue's appeal by its order dated 31.07.2008. In the Appeal No. 816 of 2008 filed by the assessee, the High Court by order dated 08.02.2009 initially directed it to be posted along with the other Appeal No. 817 of 2008 for AY 2001-2002 which was already pending. By a subsequent order dated 09.04.2012, the High Court directed preparation and filing of the paper books within a period of 10 weeks from the date of order. The necessary was done by the Appellant and the appeal was to be heard.

In the meanwhile, as the connected Appeal No. 817 of 2008 was taken up individually and came to be dismissed by the Registrar on 30.04.2012 for non-compliance. The application for restoration in Appeal No. 817 of 2008 and the review came to be dismissed by orders dated 25.02.2015 and 26.04.2017 respectively.

When the above referred facts were brought to the notice of the High Court when Appeal No. 816 of 2008 was taken for consideration, the High Court by its order dated 10.05.2017 dismissed Appeal No. 816 of 2008 on the ground that assessee's Appeal No. 817 of 2008 as well the review was dismissed. It is thus clear from the above that the High Court has not considered the matter on merits. The Appeal No. 817 of 2008 was dismissed only on the ground that the paper books were not filed within the prescribed period of time and due to the dismissal of the Appeal No. 817 of 2008, even Appeal No. 816 of 2008 was dismissed.

We are of the opinion that the High Court would have condoned the delay in filing the paper books in Appeal No. 817 of 2008 had the matter been taken up along with Appeal No. 816 of 2008. As Appeal No. 817 of 2008 stood dismissed for noncompliance, the High Court was of the opinion that inconsistent orders cannot be passed and proceeded to dismiss even Appeal No. 816 of 2008 without examining the matter on merits. We are of the opinion that the Appellant is entitled to have his appeals heard on merits.

We, therefore, condone the delay in filing the paper books in Appeal No. 817 of 2008 and consequently set-aside the order dated 25.02.2015 as also the order in review dated 26.04.2017 and restore Appeal No. 817 of 2008 on the record of the High Court.

Following the restoration of Appeal No. 817 of 2008, we also set-aside, the order dated 10.05.2017 as well as order in review dated 24.10.2017 and restore the Appeal No. 816 of 2008 to its original number.

The High Court shall now take up Appeal Nos. 816 and 817 of 2008 together and dispose of the matters after giving an opportunity to all the contesting parties.

In view of the above, present Civil Appeals are allowed.

Pending application(s), if any, shall stand disposed of.

There shall be no order as to costs.

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