



Pradnya

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 374 OF 2004

M/s. Orkay Enterprises

...Appellant

Versus

Dy. Commissioner of Income Tax

Spl. Range 27, Mumbai

...Respondent

Adv Dinkle Hariya, i/b. Adv Vipul B. Joshi, for Appellant.

Mr Suresh Kumar, for Respondent.

CORAM M.S. Sonak &
 Jitendra Jain, JJ.
DATED: 23 January 2025

PC:- (Per M. S. Sonak, J.)

1. Heard Ms Dinkle Hariya for the Appellant and Mr Suresh Kumar for the Respondent.

2. This Appeal was admitted on 22 November 2005 on the following substantial questions of law:-

“1. Whether, in the facts and circumstances of the case and in law, the Tribunal erred in confirming the penalty u/s. 271B of the Act?

2. Whether, in the facts and circumstances of the case and in law, the Tribunal erred in not following the order of the Tribunal in the case of sister concern of the Appellant, having identical facts?”

3. Ms Hariya, learned counsel for the Appellant, has submitted that the delay in filing the audit report was

condoned in the case of Appellant's sister concerns, i.e. M/s. Maple Leaf Synthetics Private Limited and M/s. Orlando Synthetic Industries Private Limited by the Tribunal. She submitted that there was no substantial difference between the cause shown in the case of the two sister concerns and the present Appellant. The mere circumstance that the delay in the Appellant's case was longer than the delay in the case of the sister concerns was not a ground to impose the maximum penalty under Section 271B of the Income Tax Act, 1961.

4. Ms Hariya submitted that the audited accounts for Assessment Year 1985-1986 were finalised, and the return of income was filed on 13 January 1986. She submitted that this Appeal concerns Assessment Year 1986-1987 and, consequently, is related to the previous year 1985-1986. She pointed out that there were raids on 30 March 1984, 27 July 1984 and 2 November 1985. The authorities seized books of accounts, cash books, general ledger etc. Considerable time was spent getting copies of all these documents to file an audit report. Ms Hariya submitted that the audit report was ultimately obtained on 8 December 1988 and filed on the next date. She submitted that in such circumstances and particularly after accepting a similar explanation in the case of the Appellant's sister concerns, no penalty under Section 271B should have been imposed on the Appellant.

5. Mr Suresh Kumar, learned counsel for the Respondents, defended the imposition of the penalty. He pointed out that the delay in the case of sister concerns was much lesser than in the case of the present Appellant. He submitted that despite the raids and seizures, the appellant always had the opportunity to secure copies of the documents. Similarly, he

submitted that no good cause was shown for the delay in preparing and filing the audit report. Accordingly, he submitted that this Appeal ought to be dismissed.

6. The rival contentions now fall for our consideration.

7. This Appeal concerns the Assessment Year 1986-1987. Therefore, the previous year would be 1985-1986.

8. There is a record, and further, it is undisputed that the Appellant group was raided on 30 March 1984, 27 July 1984, and 2 November 1985. The authorities seized and took several books of accounts because of these raids. The Respondents have not disputed this fact, and even the Income Tax Appellate Tribunal has accepted it.

9. The sister concerns filed their tax returns and audit report with some delay. Penalty proceedings were initiated against them; however, the cause they showed was ultimately accepted, and no penalty was imposed on them.

10. The cause shown by the present Appellant is not substantially different from the cause shown by the sister concerns. The delay is longer than the delay involved in the case of Appellant's sister concerns. But ultimately, in these matters, the length of the delay is only one of the considerations. However, the main consideration is the quality of the cause shown.

11. Besides, Ms Hariya pointed out that after the accounts were filed for Assessment Year 1985-1986, again, there were raids and seizures. Due to this, the Appellant couldn't file the audit report within the prescribed period. Still, it is not as if

the Appellant was indolent. All steps were possible in the circumstances that were being taken and were taken. The Appellant applied for copies of the books and, upon receiving them, submitted them to their chartered accountants. The Chartered Accountants naturally took some time to prepare the audit report. The audit report was prepared only on 8 December 1988 and filed on the next date.

12. In our judgment, the factors above should have been considered. These factors were additional to the factors that the Tribunal already accepted in the case of the Appellant's sister's concerns. These additional factors were sufficient to explain the length of the delay in the Appellant's case.

13. Based on the material on record, it does not appear that the Appellant was completely indolent or avoiding the filing of audit reports. There were genuine difficulties, and after overcoming them, the audit report was filed.

14. There is yet another circumstance based upon which the discretion should have been exercised favouring the Appellant. The Revenue accepted the Appellant's returns. In that sense, there was no loss to the Revenue. There was a delay. However, merely because there was a delay there is no case for imposition of penalty.

15. After considering all the above factors, we agree with Ms Hariya that the impugned orders warrant interference.

16. Accordingly, both the substantial questions of law are answered favouring the assessee and against the Revenue. The impugned order imposing a penalty upon the Appellant is

hereby set aside. This Appeal is allowed without any cost order.

(Jitendra Jain, J)

(M.S. Sonak, J)