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EY Tax Alert

High Court has no power to condone delay in filing appeal

Executive Summary

This alert summarizes a recent ruling of the Bombay High Court(HC) in the case of CIT Vs. Grasim Industries Ltd. [2009-TIOL-339 HC-MUM-IT] wherein the Bombay HC has dismissed the Tax Authority's application for condonation of delay in filing a tax appeal before an HC, under the provisions of the Income Tax Law (ITL).

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Issue before the HC

The Tax Authority moved an application before the Bombay HC for condoning the delay of 575 days in filing an appeal before the latter, under the provisions of the ITL. The issue was whether an HC has the power to condone the delay in filing such an appeal.

Facts of the case

The Tax Authority, as also a taxpayer, has the right to appeal to an HC against the ruling of the Tribunal (an appellate forum), within the time provided under the provisions of the ITL. The ITL has no specific provision authorizing the HC to condone the delay in filing such an appeal. Various High Courts in India were lenient in condoning the delay in filing the tax appeals before the HC by resorting to inherent powers vested in the HC. Recently, the Supreme Court(SC), in the case of Chaudharna Steels Pvt. Ltd. Vs. CCE [(2009) 238 ELT 705(SC)] and CC&CE Vs. Hongo India (P) Ltd. [(2009) 236 ELT 417(SC)] had, under the provisions of the Excise Law, held that the HC has no power to condone the delay in filing appeals to the HC. The provision dealt in by the SC in the case of Chaudharna(supra) is identical to the provision in the ITL, dealing with the filing of appeal to the HC.

Contentions of the Taxpayer

The Taxpayer, relying on the SC decisions cited above, contended that an HC has no power to condone the delay in filing the appeals. The Taxpayer contended that the provision in the Excise Law, dealt in by the SC in the case of Chaudharna (supra), was identical to the provision in the ITL and hence, the same should apply with equal force in the appeals under the ITL.

Contentions of the Tax Authority

The Tax Authority contended that SC decisions, rendered in the context of the Excise Law, would have no applicability, while dealing with the provisions in the ITL. The Tax Authority further contended that, in the absence of any specific provision under Civil Procedure Code, generally applicable to the functioning of the HC, from debarring the HC in condoning delay, the HC has power to condone the delay.

Ruling of the HC

The Bombay HC held that, in view of SC decisions cited above, an HC has no power to condone the delay under the provision of the ITL, since the provision in the ITL is identical to the provision in the Excise Law, dealt in by the SC in the case of Chaudharna (supra). The Bombay HC dismissed the application of the Tax Authority seeking condonation of delay in filing an appeal under the provisions of the ITL.

Comments

The Finance Bill 2009 has proposed a corrective amendment in the Excise Law, by making a specific provision that provides the HC with powers to condone delay in filing appeal before it. However, the Bill has no such proposal in the ITL. Consequently, this ruling may continue to operate in the field, unless appropriate amendment in the ITL is brought about on the lines of the proposed amendments in the provisions of the Excise Law.

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