

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'SMC', KOLKATA
(Before Shri P. M. Jagtap, Accountant Member)**

ITA No. 260/Kol/2014 : Asstt. Year : 2007-2008

Ashok Thakkar PAN: ABUPT 9303L (APPELLANT)	Vs	ACIT, Circle-29, Kolkata (RESPONDENT)
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Appellant by : None

Respondent by : Shri Subhrajoti Bhattacharya, JCIT, Sr.DR

Date of Hearing : 10.09.2015	Date of Pronouncement : 16.09.2015
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ORDER

This appeal is preferred by the assessee against the order of the Commissioner of Income-Tax (Appeals)-XVI, Kolkata dated 20.11.2013 for the assessment year 2007-08, whereby he dismissed the appeal filed by the assessee before him *in limine* treating the same as barred by limitation.

2. The assessee, in the present case, is an individual, who filed his return of income for the year under consideration on 02.11.2007 declaring total income of Rs.4,78,260/-. In the assessment completed under section 143(3), vide an order dated 29.12.2009, the total income of the assessee was determined by the AO at Rs.12,41,602/-, after making the following disallowances.

- i) disallowance under section 40(a)(ia) on account of rent ó Rs.3,36,310/-
- ii) disallowance under section 40(a)(ia) on account of security charges ó Rs.2,89,593/-
- iii) disallowance under section 40(a)(ia) on account of commission and brokerage ó Rs.38,232/-

iv) disallowance under section 40(a)(ia) on account of accounting charges ó Rs.22,500/- and

v) disallowance out of business promotion expenses ó Rs.35,025/-

3. Against the order passed by the AO under section 143(3), appeal was preferred by the assessee before the Id. CIT(A). Since there was a delay of 205 days on the part of the assessee in filing the said appeal, application for condonation of the said delay was moved by the assessee before the Id. CIT(A). In the said application, it was stated by the assessee that the relevant documents were given to Shri A.K.Pal, Advocate for filing the appeal but the said person did not file the appeal within the prescribed time limit and the assessee also, due to his illness during the relevant period, could not pursue the matter. According to the Id. CIT(A), this reason given by the assessee for delay in filing the appeal was not beyond his control and there was, thus, no sufficient cause for the delay on the part of the assessee in filing the appeal before him. Accordingly, the appeal filed by the assessee was dismissed by the Id. CIT(A) *in limine* treating the same as barred by limitation.

4. Aggrieved by the order of the Id. CIT(A), the assessee has preferred this appeal before the Tribunal.

5. At the time of hearing, none has appeared on behalf of the assessee before me. The written submissions filed by the assessee along with the affidavit and medical certificate, however, are placed on record, wherein the delay in filing the appeal before the Id. CIT(A) has been explained by the assessee as under:

õ3. *That I was suffering from ill health since 2009 and also met with the sudden cerebral attack on 16.10.2010 and was admitted to the Calcutta Medical Research Institute (C.M.R.I.).*

4. That due to my severe ill health, I was not in a position to maintain my record and was not in proper communication with the Authorized Representative (A/R) who was dealing with the Tax related matters.

5. That due to my ill health, I was not in a position to take decisions and so I had left all the decisions to be taken by the A/R on Income Tax matters and also to file the Appeal petition before Appellate authority.

6. That all the papers and documents were in the A/R's possession and as due to the fallen health condition, I was not in position to take updates regarding the same.

7. That the A/R, Mr. A.K. Pal at that time had negligently dealt with the income tax matters by taking advantages of my ill health and not filed the appeal against the above order of A.C.I.T, Cir-29, Kolkata, within due date.

8. That after some recovery, I had finally managed to collect all the relevant papers and documents from the A/R and found that no appeal was filed against the aforesaid assessment order.”

6. It is observed that similar reasons as above were also advanced by the assessee before the Id. CIT in order to explain the delay of 205 days in filing his appeal. The Id. CIT(A), however, did not accept the explanation of the assessee on the ground that the reason given by the assessee for delay in filing the appeal was not beyond his control. I am unable to subscribe to this view of the Id. CIT(A). In my opinion, when the assessee was suffering from illness during the relevant period, due to which, he could not pursue the matter of filing the appeal before the Id. CIT(A) and the same was duly supported by a medical certificate issued by the Calcutta Medical Research Institute, it cannot be said that the reason given by the assessee for delay in filing the appeal was not beyond his control. As a matter of fact, the illness during the relevant period was beyond the control of the assessee and since he could not

pursue the matter of filing the appeal before the Id. CIT(A) within the prescribed time limit, due to such illness, there was certainly a sufficient cause, which prevented the assessee from filing the appeal before the Id. CIT(A) within the specified time. At the time of hearing, the Id. DR has also not been able to rebut or controvert this position. I, therefore, set aside the impugned order of the Id. CIT(A) and condoning the delay on the part of the assessee in filing his appeal before the Id. CIT(A), remit the matter back to the Id. CIT(A) with a direction to dispose off the appeal of the assessee afresh on merits, after giving proper and sufficient opportunity of being heard.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order Pronounced in the Open Court on 16th September, 2015.

Sd/-
(P.M.Jagtap)
ACCOUNTANT MEMBER

Dated: 16/09/2015

Copy of order forwarded to:

- 1 Ashok Thakkar, Flat-1D, Lal Kamal, 27, Baker Road, Kolkata ó 700 027
- 2 ACIT, Circle-29, Kolkata
- 3 The CIT(A),
- 4 CIT,
- 5 D.R.

True Copy,

By order,

Asstt. Registrar, ITAT, Kolkata

Talukdar/Sr.PS