

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ 'जे', मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL "J", BENCH, MUMBAI
सर्वश्री राजेन्द्र, लेखा सदस्य, एवं , राम लाल नेगी न्यायिक सदस्य के समक्ष

BEFORE SHRI RAJENDRA, AM AND SHRI RAM LAL NEGI, JM
आयकर अपील सं./ITA No. 3257/Mum/2014
(निर्धारण वर्ष / Assessment Year: 2007-08)

Shri Tejraj D Kothari, Shop No. 3, Shiv Baug, Daftary Road, Malad East, Mumbai - 400097	Vs.	The DCIT 24(2), Bandra Kurla Complex, Bandra (East), Mumbai - 400051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABPK8519P		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : None
राजस्व की ओर से /Revenue by : Ms. Arju Garodia (DR)

सुनवाई की तारीख / **Date of Hearing** : **05/04/2017**
घोषणा की तारीख/**Date of Pronouncement**: **28/04/2017**

आदेश / O R D E R

PER RAM LAL NEGI, JM

This appeal has been preferred by the assessee against order dated 26/06/2012 passed by the Ld. CIT (A), 34, Mumbai pertaining to the Assessment Year 2007-08, whereby the Ld. CIT(A) dismissed the appeal filed by the assessee against the assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that assessee a trader and retailer in jewellery business filed his return of income for the relevant assessment year declaring the total income of Rs. 10,20,510/-. The return was processed and in response to the notices issued u/s 143(2) and 142(1) the authorized representative of the assessee appeared before the AO and presented the case of the assessee. The

AO after verification of the details filed by the assessee computed the total income of the assessee at Rs. 14,28,570/-(rounded off).

3. Aggrieved by the assessment order the assessee carried the matter before the CIT(A) in first appeal. The Ld. CIT(A) after hearing the assessee dismissed the appeal and upheld the findings of the AO. Still aggrieved, the assessee is in appeal before the Tribunal on the following effective grounds:-

1. *“On the facts and in the circumstances of the case in law, the learned CIT (A) erred in allowing the addition made by the Assessing Officer towards unproved creditors Rs. 1,61,654/-.*
2. *On the facts and in the circumstances of the case in law, the learned CIT (A) erred in allowing the disallowance made by the Assessing Officer towards 50% of cost of construction of the house property on account of lack of evidence.*
3. *On the facts and in the circumstances of the case in law, the learned CIT (A) erred in allowing the disallowance made by the Assessing Officer towards Chapter VI-A deduction of Rs. 81,967/- on account of absence of supporting evidence.*
4. *The appellant craves leave to amend or alter any ground or add a new ground.”*

4. This appeal was fixed for hearing for the first time on 2.7.2015, however, none appeared on behalf of the assessee on the said date. Since then the assessee has sought adjournments for more than five times. On the last date of hearing, i.e., on 23.02.17 the case was again adjourned at the written request of the assessee and posted the case for hearing for 05.04.17. On 05.04.17, again an application for adjournment was received through some person who was even not authorized by the assessee to appear before the Tribunal, stating therein that the authorized representative is out of station. In view of the conduct of the assessee, we rejected the application for further adjournment

and decided to proceed *ex-parte* against the assessee and dispose of the appeals on the basis of material available on record, after hearing the departmental representative.

5. The Ld. departmental representative at the outset pointed out that there is an inordinate delay of more than 600 days in filing the present appeal and the reasons for delay filed by the assessee is not sufficient to condone the delay, therefore, the appeal is not maintainable and is liable to be dismissed.

6. We have noticed that this appeal has already been dismissed by the SMC Bench of the Tribunal vide order dated 05.10.2015 on the ground that the appeal is barred by limitation. Later on the case was recalled in MA 289/M/15 and the assessee filed application dated 27.12.2016 for condonation of delay along with the copy of affidavit sworn by the assessee. Subsequently, vide application dated 14.02.17 the assessee submitted an affidavit sworn by Mr. Manish Oza, the then authorized representative of the assessee.

7. In the said affidavit, Mr. Manish Oza has stated that the assessee had handed over the original documents to him for filing appeal; the papers received were mixed up with other papers in his office due to which the present appeal could not be presented before the Tribunal within limitation period.

8. Sub-section 5 of section 253 of the Income Tax Act provides that the Tribunal may admit appeal or permit filing of memorandum of cross-objection of respondent after expiry of relevant period of limitation referred to in sub-section 3 and 4 section 253, if it is satisfied that there was sufficient cause for not presenting it within that period. So, sufficient cause is a condition precedent for condoning the delay. As per the settled law the question whether

there exists a sufficient causes for condoning the delay or not is ordinarily a question of fact.

9. The Hon'ble Supreme Court has time and again held that when the delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone. In the present case, the facts and circumstances do not suggest that the delay has not been caused due to inaction and negligence on the part of the assessee. The assessee was well aware about the delay in filing the appeal despite that application for condonation was not moved along with the appeal memo. It was moved when the appeal of the assessee was dismissed as not maintainable being barred by limitation. Moreover, the affidavit of Mr. Manish Oza was presented before us on 14.02.2017. Therefore, we are of the considered view that reasons mentioned in the application and the affidavits are not plausible therefore, the assessee has failed to prove sufficient reasons which prevented him from presenting the appeal within limitation period. Hence, considering the facts and circumstances, we do not find sufficient ground to condone the inordinate delay of 620 days in filing the present appeal. We, therefore, dismiss the application for condonation of delay and hold that the present appeal is not maintainable being barred by limitation.

In the result, appeal filed by the assessee for assessment year 2007-2008 is dismissed.

Order pronounced in the open court on 28th April, 2017.

Sd/-

Sd/-

(RAJENDRA)
ACCOUNTANT MEMBER

(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 28/04/2017

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**