

आयकर अपीलीय अधिकरण, B/‘SMC’ न्यायपीठ, चेन्नई ।

IN THE INCOME TAX APPELLATE TRIBUNAL
B/“SMC” BENCH, CHENNAI

श्री. चंद्र पूजारी लेखा सदस्य , के समक्ष ।

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

I.T.A.No.3120/Mds./2016

(Assessment Year : 2009-10)

Mr.J.Stephen,
428-A,Behind Ladies Hostel,
Karunya Nagar P.O,
Coimbtore 641 114.

PAN BBNPS 0316 J

(अपीलार्थी /Appellant)

Vs. The Income Tax Officer,
Ward V(1),
Coimbatore.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Mrs.S.Sriniranjani,Advocate
प्रत्यर्थी की ओर से/Respondent by : Mr.B.Sagadevan, JCIT, D.R

सुनवाई की तारीख/ Date of hearing : 01.11.2017
घोषणा की तारीख /Date of Pronouncement : 01.11.2017

आदेश / O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal is filed by the assessee, aggrieved by the order of the Learned Commissioner of Income Tax(A)-3, Chennai dated 29.06.2015 pertaining to assessment year 2009-10.

2. The assessee has raised the following grounds for adjudication.

1. The order of the Learned Commissioner of Income Tax (Appeals) confirming the order of the Assessing Officer is illegal, contrary to law and facts and is liable to be dismissed in full.
2. The Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs 33,17 177/- as unexplained income of the Assessee
3. The Commissioner of Income Tax (Appeals) has not considered the detailed explanations produced before him for the aforesaid cash deposits and thus the order of the Commissioner of Income Tax (Appeals) does not hold any merit.
4. The Commissioner of Income Tax (Appeals) ought to have considered the detailed evidences of Mrs. Gnanagandhi. In fact, there is a finding in the remand report of the Assessing Officer that Mrs. Gnanagandhi was paid by the buyer in cash.
5. The Commissioner of Income Tax (Appeals) ought to have also considered the explanation offered for the other cash deposits.

3. The facts of the case are that for Assessment Year 2009-10, the assessee filed his Return of Income on 22.05.2009 declaring an income of ₹4,40,3301-. The case was selected for scrutiny and assessment was completed u/s 143 (3) vide order dated 29.05.2011,

wherein an amount of ₹32,17,717/- was added as undisclosed cash deposit into bank account with IDBI. Against the aforesaid order of assessment, the assessee filed an Appeal before the CIT(A) Coimbatore, who vide order dated 29.06.015 dismissed the appeal without considering the detailed submissions of the Petitioner. Against the aforesaid order of the Commissioner of Income-tax (Appeals), now the assessee is preferring an Appeal before this Tribunal.

4. At the outset, it was noticed that there was a delay of 72 days in filing the appeal before this Tribunal. The assessee stated in his submission as follows:-

“At the outset, it is submitted that the Petitioner was unaware of the disposal of the aforesaid appeal by the Commissioner of Income-tax (Appeals), Coimbatore. He was under the bona fide belief that it was pending disposal. Only when he was reminded of the demand by the department, the Petitioner came to know about the order which was misplaced by him.

Upon an immediate search in the office premises of the Petitioner, he found that the appellate order was misplaced by his staff and subsequently was lost track of.

It is submitted that the delay in filing the present appeal is neither wilful nor wanton but due to the reasons stated above. The Petitioner has a good case on merits and will be put to irreparable loss and hardship if the aforesaid appeal is not admitted by this Hon'ble Tribunal.

Hence the Petitioner prays that this Hon'ble Tribunal be pleased to

- (i) Condone the delay in filing the above appeal;
- (ii) Hear and dispose of the appeal on merits; and
- (iii) Pass such further or other order or orders as this Hon'ble Tribunal may deem fit and necessary in the circumstances of the case and thus render justice.”

5. After hearing both the parties and perusing the material on record, I am of the opinion that in this case, the delay of 72 days in filing the appeal before this Tribunal is on account of negligence of assessee, and it cannot be condoned on simple reason that the case calls for sympathy or merely out of benevolence to the party seeking relief. In granting the indulgence and condoning the delay, it must be

proved beyond the shadow of doubt that the appellant was diligent and was not guilty of negligence, whatsoever. The sufficient cause within the contemplation of the limitation provisions must be a cause which is beyond the control of the party invoking the aid of the provisions. The Hon'ble Supreme Court in the case of Ramlal Vs. Rewa Coalfields Ltd. in AIR 1961 (SC) 361 has held that the cause for the delay in filing the appeal, which by due care and attention, could have been avoided, cannot be a sufficient cause within the meaning of the limitation provision. Where no negligence or inaction, or want of bonafides can be imputed to the appellant, a liberal construction of the provisions has to be made in order to advance substantial justice.

5.2 In the present case, the reason advanced by the assessee cannot be considered as good and sufficient reason to condone the delay. The reasons advanced by the assessee really show that the delay was due to the negligence and inaction on the part of the assessee. The assessee could have very well avoided the delay by exercising of due care and attention. In my opinion, there exists no

sufficient and good reason for delay of filing the appeal by 72 days. Therefore, I am of the opinion that this kind of delay does not warrant condonation, since the assessee has not shown valid reasons cause for filing the appeal belatedly by such inordinate delay of 72 days. Accordingly, this appeal of assessee stands dismissed.

6. In the result, the appeal of assessee is dismissed.

Order pronounced on 1st November, 2017.

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

Chennai,

Dated the 1st November, 2017.

K s sundaram.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |