

आयकर अपीलिय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य, एवं श्री अनिल चतुर्वेदी, लेखा सदस्य, के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No.1907/PUN/2014

निर्धारण वर्ष / Assessment Year : 2008-09

Mrs. Manju Madhusudan Dhoot,
L/h of Late. Madhusudan Banshilal Dhoot,
Prop. M.S. Electronics Gangapur Gin Compound,
Near Keshar Gulab Mangal Karalay
Station Road,
Ahmednagar-414 001.
PAN :ADRPD8696H

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-1, Ahmednagar.

.....प्रत्यर्थी / Respondent

Appellant by : Shri Nikhil Pathak & Mahavir Jain
Respondent by : Mukesh Jha.

सुनवाई की तारीख / Date of Hearing : 18.01.2018	घोषणा की तारीख / Date of Pronouncement : 10.04.2018
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आदेश / ORDER

PER ANIL CHATURVEDI, AM

1. This appeal of the assessee is emanating out of the order of Commissioner of Income Tax (Appeal)-I, Pune dated 21.12.2011 for the assessment year 2008-09.
2. The relevant facts as culled out from the material on record are as under:-

Assessee is an individual stated to be having manufacturing of electronic appliances. The assessee filed his return of income for A.Y 2008-09 on 30.09.2008 declaring total income of Rs.6,46,710/-. The case of assessee was selected for scrutiny and thereafter, assessment was framed u/s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide order dated 24.12.2010 determining total income of Rs.1,30,25,111/-. Aggrieved by the order of Assessing Officer, Assessee filed appeal before CIT(A) who vide order dated 21.12.2011 (in appeal no.PN/CIT(A)-I/DCIT/AN Cir.AN/174/10-11) dismissed the appeal of Assessee. Aggrieved by the order of CIT(A), Assessee filed appeal before Tribunal. The Tribunal vide order dated 15.12.2016 in ITA No.1907/PUN/2014 dismissed the appeal of Assessee. Aggrieved by the order of Tribunal, Assessee filed Miscellaneous Application (M/A) wherein it was contented that appeal was dismissed by Co-ordinate Bench on account on non prosecution and non appearance of the assessee. Reasons for non appearance were submitted by assessee. After considering the submissions made on behalf of Assessee the order in ITA No.1907/PUN/2014 was recalled vide Miscellaneous Application No. 51/PUN/2017 order dated 27.10.2017 and thus, the appeal is now before.

3. The case file reveals that there was delay of 1052 days in filing the present appeal. Mrs. Manju Madhusudan Dhoot, Legal heir of Late Madhusudan Banshilal Dhoot has filed an affidavit dated 08.10.2014 wherein inter alia it is submitted that Madhusudan Banshilal Dhoot, the husband of Mrs. Manju Madhusudan Dhoot was looking after the business. He expired on 08.05.2012. Prior to his death, he was having many health issues and was hospitalized for a period of almost one year and therefore, he could not attend to any of his business nor could appear before CIT(A). It is further submitted that none of her

family members were aware of his business happenings and it was only when the Income Tax Department started to pressurize for the demand, she could look into the matter and she realized that after his death entire business activity has come to an halt and it was very difficult to get even the required documents. Thereafter, after taking advice of some legal consultants, she filed the appeal. In these circumstances, delay had occurred in filing the present appeal and the delay was not due to any mala-fide intentions. She therefore, prayed that the delay occurred in filing the present appeal be condoned.

4. The Ld. AR for the assessee took us to the contention of affidavit and submitted in view of the submissions made by Legal heir of assessee and considering the facts and circumstances; delay in filing appeal may be condoned. The Ld. DR did not seriously objected to the prayer for condonation of delay in filing of appeal.

5. We have heard the rival submissions on the issue of condonation of delay. The assessee has in the sworn affidavit spelt out the reasons which lead to the delay in filing the present appeal. In view of the settled law that when substantial justice and technicalities are pitted against each other, then the cause of substantial justice deserves to be preferred and after considering the averments made in the affidavit and in the interest of justice, we condone the delay and admit the appeal for hearing.

6. Grounds raised by assessee reads as under:

“1. On the facts and in the circumstances of the case and in law the Learned CIT (A) I, erred in rejecting the appeal by passing ex-parte order by following judgment of 38 ITO 320 (Del) CIT Vis. Multiplan India limited, without considering the fact that such powers are not vested with first appellate authority.

2. On the facts and in the circumstances of the case and in law, the Lower Authorities have erred in making an addition of Rs.1,23,78,401/- by invoking provisions of section 68 of the Income Tax Act, 1961 thereby made an addition of entire sundry creditors transacted during the year by merely verifying only 8 parties out of the total sundry creditors.

3. The appellant craves for to leave, add, alter, modify, delete above ground of appeal before or at the time hearing, in the interest of natural justice.”

7. During the course of assessment proceedings, Assessing Officer noted that the balance sheet as at 31/03/2008 showed closing stock of Rs.3,72,62,824/-, sundry creditors of Rs.3,92,78,090/- and the total turnover of Rs. 3,52,21,512/-. The Assessing Officer noted that sundry creditors exceeded the total turnover and it raised suspicion about the genuineness of sundry creditors shown in the balance sheet. The assessee was asked to file copies of account extracts, confirmation letters, copies of return of income etc of the creditors. Assessing Officer noted that Assessee filed a part list of the creditors and the list did not contain their addresses. The Assessing Officer, thereafter, deputed one Inspector to carry out verification with some of the creditors. The Assessing Officer noted that the Inspector visited eight creditors of Aurangabad and reported that out of eight persons, seven creditors confirmed that they did not have any transaction whatsoever with assessee. The finding of Inspector was informed to the assessee. The Assessing Officer noted that no satisfactory explanation was furnished by assessee. He, therefore, considered the increased sundry creditors for the year of Rs.1,23,78,401/- as unexplained cash credits and made its addition u/s.68 of the Act.

8. Aggrieved by the order of Assessing Officer, assessee carried the matter before CIT(A) who in ex-parte order dated 21/12/2011 confirmed the addition made by Assessing Officer. Aggrieved by the order of CIT(A), the assessee is in appeal before us.

9. Before us, the Ld. AR reiterated the submissions made before Assessing Officer and CIT(A). It was also submitted that due to the reasons stated in the affidavit filed for condonation of delay of present appeal and due to bad health of the Assessee, necessary details could not be furnished before CIT(A). He further submitted that Madhusudan Banshilal Dhoot expired on 08.05.2012 and after his death business has closed. He also submitted that in earlier year and subsequent year 10% of the total purchases have been disallowed whereas in the current year an entire purchase of Rs.1.24 Crore have been disallowed. He therefore, submitted that in the totality of facts and circumstances, reasonable and sympathetic view may be taken as in earlier and subsequent years, the addition be restricted to 10% of purchase. The Ld. DR on the other hand supported the order of Assessing Officer.

10. We have heard the rival submissions and perused the material on record. The issue in the present case is with respect to addition of sundry creditors' amounting to Rs.1,23,78,401/- u/s. 68 of the Act. Before us, Legal heir of Shri Manju Madhusudan Dhoot has filed an affidavit wherein it is inter alia submitted that Madhusudan Banshilal Dhoot was under treatment since 2010-2011 because of which he could not furnish necessary documents/details before Authorities below and he expired on 08.05.2012 and after his death, business is closed. Before us, Ld. AR submitted that in the earlier year and subsequent year, additions on account of unexplained creditors u/s. 68 has been made to the extent of 10% of purchases. The aforesaid contention of the Ld. AR and legal heir of the Assessee has not been controverted by Revenue. We also find that CIT(A) has passed an ex-parte order. In a normal situation, we would have remitted the issue back to the file of CIT(A) to pass a de-novo speaking order. However, in the peculiar facts of the present case, we are of the view that remitting the mater

back to CIT(A) would result into multiplicity of proceedings. Considering the peculiar facts of the present case, we are of the view that in the present case to prevent multiplicity of proceedings, interest of justice shall be met if the addition is restricted to 10% of the total purchases of Rs.1,23,78,401/-. We, accordingly, uphold the addition to the extent of Rs.12,37,840/- as against the addition of Rs.1,23,78,401/- made by Assessing Officer and confirmed by CIT(A). Thus, ground raised by Assessee is partly allowed.

11. In the result, appeal of the assessee is partly allowed.

Order pronounced on this 10th day of April, 2018.

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(ANIL CHATURVEDI)
लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 10th April, 2018

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आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Pune.
4. The CIT-1, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव /Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.