

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "J", MUMBAI

Before Shri G S Pannu, Accountant Member
& Shri Pawan Singh, Judicial Member

ITA No.410/Mum/2017
Assessment Year : 2009-10

M/s. Siroya Developers, 101 Kingston Towers, G D Ambedkar Marg, Parel Tank Road, Parel (E), Mumbai 400 033.	Vs.	ITO 17(3)(3) Previously assessed with ACIT 31(3) Mumbai
PAN AANFS1544G (Appellant)		(Respondent)

Appellant By : Shri B V Jhaveri & Shri Mayank Thosar
Respondent By : Ms. Arju Garodia

Date of Hearing : 21.06.2018

Date of Pronouncement : 21.06.2018

ORDER

Per G S Pannu, Accountant Member

This appeal is directed against the order of the CIT(A)-28, Mumbai, dated 22.11.2016, which in turn has arisen out of the order passed by the Assessing Officer u/s. 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") relating to A.Y. 2009-10.

2. Although the substantive dispute in this appeal relates to penalty of ₹ 29,46,912/- imposed u/s. 271(1)(c) of the Act, the preliminary grievance of the assessee is that the CIT(A) erred in dismissing the appeal of the assessee as "non-admitted" by refusing to condone the delay in filing of appeal.

3. The learned representative for the assessee explained that after levy of penalty by the Assessing Officer u/s. 271(1)(c) of the Act, vide order dated 31.03.2015, there was a delay in filing of appeal before the CIT(A) by 48 days. The reasons for the delay were explained before the CIT(A), mainly that one

Mr. Bhalchandra Sadhale, CA, an employee of the assessee group, who was looking after the day to day taxation matters, suddenly resigned from the employment on 28.04.2015. The learned representative has taken us through the impugned order of the CIT(A) and pointed out that without giving a finding about the veracity of the reasons explained, the condonation of delay has been refused in an inadequate manner.

4. Before us, the learned representative has referred to an affidavit by one of the partners of the assessee firm Shri Shrenik D Siroya, wherein the reasons for the delay in filing of appeal have been elaborately averred. The relevant portion of the affidavit reads as under:

"I further say that Mr. Bhalchandra Sadhale had suddenly left the job on 28th April, 2015 for which he wrote to me an e-mail at 6.00 p.m. on 28th April, 2015 wherein he recorded that he would not be continuing with the Group from the next day. A copy of the e-mail sent by Mr. Bhalchandra Sadhale on 28th April, 2015 to me is enclosed herewith and marked Annexiire-B.

5. I further say that Mr. Bhalchandra Sadhale was looking after the Accounts and Taxation matters of M/s. Siroya Developers and therefore, he had received in the month of April, 2015 the order of the AO levying penalty u/s.271(1)(c) of the Act for A.Y. 2009-10. As Mr. Bhalchandra Sadhale left the job suddenly without any intimation or notice, the said order remained unattended as he had never informed any other person about the receipt of the said order. In these circumstances, neither M/s. Siroya Developers nor I was aware about such order passed levying penalty u/s.271(1)(c) of the Act for A.Y. 2009-10.

6. I further say that my representative who attended before the AO for stay of demand for A.Y. 2012-13 in the month of May, 2015 was informed by the AO that M/s. Siroya Developers has to pay penalty u/s.271(1)(c) of the Act for A.Y. 2009-10 as the order was passed by him. On getting this information, the appeal was prepared and filed on 23rd June, 2015. Thus there was a delay of 48 days in filing the appeal with the Commissioner (Appeals) against levy of penalty u/s.271(1)(c) of the Act. I say and submit that the delay in filing the appeal has been caused due to Mr. Bhalchandra Sadhale leaving the job without any prior intimation or notice or without giving charge of the pending matters with him on 28th April, 2015.

7. I further say and submit that the delay in filing the appeal was not due to any mala fide reason but due to the reasons beyond the control of the

assessee firm and its partners as they were not made aware about the order levying penalty received by the office of the assessee firm."

5. On the basis of the aforesaid reasons, the representative relied upon the decision of Hon'ble Supreme Court in the case of Collector Land Acquisition vs. Mst. Katiji & Ors [167 ITR 471] as well as in the case of N Balakrishnan vs. M .Krishnamurthy [(1988) 7 SCC 123] and submitted that the CIT(A) grossly erred in not condoning the delay in filing of appeal and, in turn, dismissing it as unadmitted.
6. On the other hand, learned DR has merely reiterated the order of the CIT(A) on this aspect.
7. Having considered the rival stands, we find that section 249(3) of the Act permits the CIT(A) to admit an appeal, which has been filed after the expiration of the prescribed period if he is satisfied that the appellant had "*sufficient cause*" for not presenting the appeal within the stipulated period. The expression "*sufficient cause*" employed by the legislature in the context of power of appellate authority to condone the delay has come up for adjudication before the courts on several occasions. Pertinently, the Hon'ble Supreme Court in the case of Mst. Katiji & Ors (supra), referred to the expression "*sufficient cause*" in the context of section 5 of Limitation Act of 1963, and explained that it is intended "*to enable the courts to apply the law in a meaningful manner which subserves the ends of justice – that being the life- purpose of the existence of the institution of courts*". The Hon'ble Supreme Court further went on to explain that in considering matters relating to condonation of delay a pedantic approach should not be adopted and that a rationale, common sense and pragmatic approach be adopted. The Hon'ble Supreme Court in the case of N Balakrishnan vs. M .Krishnamurthy (supra), noted that there can be no presumption that the delay in approaching the court is always deliberate. The Hon'ble Supreme Court specifically noted that in every case of delay there can be "*some lapse*" on the part of the litigant but that alone cannot be a ground enough to turn down the plea for condonation of delay. In the present case, we have perused the order passed by the CIT(A) and find that after reproducing the reasons for the delay explained by the assessee, he has extracted a

host of judicial decisions without explaining as to how they are relevant to the facts of the instant case. After reproducing the judicial decision the only discussion made by the CIT(A), which is quite cryptic, is in the following three lines:

"Thus there appears no sufficient cause for time barred nature of appeal applying the above. Instead it is gross negligence and cavalier attitude of appellant which is reflected in the so called reason furnished."

8. It is obvious from the perusal of the order of CIT(A) that the specifics of the reasons convassed by the assessee have not at all been addressed, and the same has been given a short shrift. Nevertheless we have examined the reasons convassed by the assessee and find that there is no material to doubt the bona fides of the same. In fact, the sudden resignation of the concerned employee, which has been put forth by means of an affidavit, is duly supported by the copy of the email of the concerned employee which is annexed to the affidavit. A cursory glance of said email also shows that the employee concerned accepts his *"unprofessional approach of not giving a months notice"* while resigning from his employment. Be that as it may, in our view, in the absence of anything to doubt the bona fide of the reasons convassed and there being no material to show any negligence on the part of the appellant, in our view, the delay in filing the appeal ought to have been condoned. We hold so.

9. Having condoned the delay in filing the appeal before the CIT(A) and in the absence of the CIT(A) dealing the issues on merits, we find it fit and proper to restore the file to the CIT(A), who shall consider and decide the Grounds of appeal raised by the assessee before him on merits and in accordance with law.

10. Thus, the appeal of the assessee is treated as partly allowed for statistical purpose as above.

The above decision was pronounced in the open court at the conclusion of hearing in the presence of both the parties today i.e. 21st June, 2018.

Sd/-
(Pawan Singh)
JUDICIAL MEMBER

Sd/-
(G S Pannu)
ACCOUNTANT MEMBER

Mumbai, Dated : 21st June, 2018.

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Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT , Mumbai.
5. The DR, 'J' Bench, ITAT, Mumbai

BY ORDER

//True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai