

आयकरअपीलीयअधिकरणसूरतन्यायपीठ,सूरत
IN THE INCOME TAX APPELLATE TRIBUNAL,SURAT
BENCH,SURAT

श्रीसी एमगर्ग, न्यायिक सदस्य एवंश्रीओपीमीना, लेखा सदस्य केसमक्ष
BEFORE SHRI C.M.GARG, JUDICIAL MEMBER AND
SHRI O.P.MEENA, ACCOUNTANT MEMBER

आयकरअपीलसं. / ITA Nos.433 & 434/Ahd/2017/SRT

निर्धारणवर्ष/ Assessment Years: 2009-10& 2010-11

M/s. Radhe Fuld,
C/o. Vinit J. Shah & Associates,
306, 3rd Floor, Status Avenue,
9 Sampat Rao Colony,
Opp: Amantram Alkapuri,
Vadodara – 397 007.

[PAN: AAKFR 1788E]

(अपीलार्थी/Appellant)

Vs. Income Tax Officer,
Ward-1,
Bardoli.

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Assessee by

: Shri Mehul Shah, C.A

प्रत्यर्थीकीओरसे /Revenue by

: ShriB.P.K. Panda, Sr. D.R

सुनवाईकीतारीख/Date of Hearing

: 28-06-2018

घोषणाकीतारीख /Date of Pronouncement

: 13-07-2018

आदेश /ORDER

PERC.M.GARG, JUDICIAL MEMBER:

These two appealshave been filed by the Assessee directed against the common order of Commissioner of Income Tax (Appeals)-1, Surat ('CIT(A)' for short) dated 26.12.2016 for the Assessment Year (A.Ys) 2009-10 & 2010-11.

2. The grounds raised by the Assessee in ITA No.433/Ahd/2017/SRT read as follows:

1. *Whether, on facts and circumstances of the case and in law, the Id. Assessing Officer erred in initiating the reassessment proceedings under section 147 of the Income Tax Act?*

2. *Whether, on facts and circumstances of the case and in law, the Id. Assessing officer erred in disallowing the deduction u/s. 80JJA of the Income Tax Act?*

3. *Whether, on facts and circumstances of the case and in law, the Id. Assessing Officer erred in initiating the re-assessment proceedings on charge of opinion on same facts?*

Application for additional ground of the assessee:

3. We have heard the arguments of both sides and carefully perused the relevant material placed on the record of the Tribunal. The Id. Assessee's Representative (AR) submitted that the Id. CIT(A) has dismissed appeal of the assessee as not maintainable on account of 39 days delay in filing appeal before him and the assessee could not raise ground relating to this grievance of the appellant for both the appeals. Therefore, the ground being related to violation of principles of natural justice may kindly be admitted for consideration in view of decisions of Hon'ble Supreme Court in the cases of *NTPC v. CIT 229 ITR reported at 383 and Jute Corporation of India Ltd. v. CIT 187 ITR 688 (SC)*.

4. Replying to the above, the Id. Departmental Representative (DR) submitted that the additional ground cannot be raised at this belated stage.

5. On careful consideration of above rival submissions, we are of the view that from the first appellate order, it is clear that the Id. CIT(A) dismissed appeals of the assessee on account of delay in filing appeals by denying condonation of delay of 39 days and in Form No.36 this ground could not be raised by the assessee. The additional ground sought to be raised by the assessee is legal and the same may be decided on the basis of facts and documents already on record therefore, the same is admitted for hearing by following ratio of decisions Hon'ble Supreme Court in the case of NTPC (supra) and Jute Corporation (supra).

6. The additional ground of assessee reads as follows:

“On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in treating the appeal as belated. Even otherwise, the Id. CIT(A) ought to have allowed the condonation of delay on the grounds of sufficient cause.”

7. We have heard the arguments of both sides on the additional ground and carefully perused the relevant material placed on the record of the Tribunal. The Id. AR further submitted that the assessment order was not properly served on the assessee and the person Kanubhai on which the assessment order has been alleged to be served is not related with the assessee in any manner and when the copy of assessment order was received by the assessee after three months from the date of order then, the assessee filed appeals before the Id. CIT(A) which was delayed

due to above bonafide reasons by 39 days and the Id. First appellate authority ought to have condoned the delay in filing appeals. The Id. AR also submitted that the assessee is not engaged in filing appeal by delay of 39 days. Placing on the preposition laid down by ITAT, Ahmedabad in the case of Platinum Pvt. Ltd. and decision of Hon'ble Supreme Court in the case of *Collector, Land Acquisition vs. Mst. Katiji reported at 167 ITR 471 (SC)*, the delay should be condoned and the appeals may kindly be restored to the file of the Id. CIT(A) for adjudication of appeals on merits.

8. The Id. DR oppose to the submissions of the Id. AR and submitted that there was no sufficient and good cause with the assessee explaining the delay of 39 days in filing appeal before the Id. CIT(A) therefore, the first appellate authority was right in dismissing appeals of the assessee on account of non-maintainable being time barred.

9. However, in all fairness The Id. DR submitted that if it is found just proper and necessary then, the department has no serious objection if after condoning the delay of 39 days, the appeals are restored to the file of the Id. CIT(A) for adjudication.

10. On careful consideration of above rival submissions, we are of the view that the assessment order was served on the assessee on 12.12.2015 to the unknown person Shri Kanubhai and there is no allegation in the impugned order that Kanubhai was either employee or

related with the appellants in any manner therefore, service of assessment order was not made properly on the assessee. In this situation, delay of 39 days in filing appeal is bonafide and due to above noted sufficient cause the delay in filing appeal should have been condoned by the Id. CIT(A). Findings of the Id. CIT(A) on dismissing condonation of delay are not sustainable and we dismiss the same and we condone the delay of 39 days in filing both the appeals before the Id. CIT(A). Additional ground in both the appeals is allowed.

11. Since, the Id. CIT(A) has dismissed appeals of the assessee on account of non-maintainability being time barred without any adjudication on merit therefore, both the appeals are restored to the file of Id. CIT(A) for fresh adjudication after affording due opportunity of hearing to the assessee.

12. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on this day of 13th July, 2018.

Sd/-

(ओपीमीना)

(O.P.MEENA)

लेखासदस्य Accountant Member/

सूरत/Surat; दिनांक Dated : 13th July, 2018,

EDN

Sd/-

(सीएमगर्ग)

(C.M.GARG)

न्यायिकसदस्य Judicial Member/

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

1. अपीलार्थी/The Appellant; 2.प्रत्यर्थी/The Respondent; 3.आयकरआयुक्त(अपील) /The CIT(A)-1, Surat; 4. Prl. CIT-2, Surat; 5. विभागीयप्रतिनिधि,आयकरअपीलीयअधिकरण,सूरत/DR, ITAT, Surat; 6. गार्डफाईल / Guard file.