

आयकर अपीलीय अधिकरण “एक-सदस्य मामला” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, PUNE

श्री अनिल चतुर्वेदी, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI ANIL CHATURVEDI, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA Nos. 575 & 576/PUN/2018
निर्धारण वर्ष / Assessment Years : 2009-10 & 2010-11

Shri Ramrao Tukaram Patil
Plot No. 29, Shanti Bunglow,
Mahatma Nagar,
Nashik – 422 007.
PAN : AHXPP2905M

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward 2(2), Nashik.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sanket Joshi
Revenue by : Shri M.K. Verma

सुनवाई की तारीख / Date of Hearing : 21.01.2019

घोषणा की तारीख / Date of Pronouncement : 25.01.2019

आदेश / ORDER

PER VIKAS AWASTHY, JM

These two appeals by the assessee for Assessment Years 2009-10 and 2010-11 are directed against the order of Commissioner of Income Tax (Appeals) – 2, Nashik dated 04.11.2016 common for both the above Assessment Years.

2. These appeals have been filed with delay of 454 days. The assessee has filed an application seeking condonation of delay supported by an affidavit. A perusal of the affidavit shows that the assessee was involved in multiple litigations, civil and criminal. The assessee was also under

treatment for liver cirrhosis and mental trauma. After examining the reasons given for the delay in filing of the appeal we are satisfied that the delay in filing of the appeal is reasonably explained.

3. It is a well settled proposition that acceptance of explanation furnished for seeking condonation of delay should be the rule and refusal an exception. The Hon'ble Supreme Court of India in the case of Ram Nath Sao Vs. Gobardhan Sao and Others reported as 2002 (3) SCC 195 has held:

“There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal an exception more so when no negligence or inaction or want of bona fide can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine like manner. However, by taking a pedantic and hyper technical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way.”

4. The Hon'ble Supreme Court of India in the case of Collector, Land Acquisition vs. M.S.T. Katiji and Others reported as 167 ITR 471 has held that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in injustice being done because of a non-deliberate delay. The Hon'ble Apex Court condoned the delay taking a pragmatic and liberal approach.

5. Thus, in view of the law laid on by the Hon'ble Apex Court, the explanation furnished by the assessee seeking condonation of delay is

accepted and the delay in filing of the present appeals is condoned. The appeals are admitted to be heard and disposed off on merits.

6. Shri Sanket Joshi, appearing on behalf of the assessee submitted that the appeals have been decided by the First Appellate Authority in an *ex-parte* proceedings. The assessee due to multiple litigations could not properly represent his case before the AO. The addition of Rs. 27,96,500/- in Assessment Year 2009-10 and addition of Rs. 7,16,000/- in Assessment Year 2010-11 has been made on account of cash deposits in the bank account. The Ld. AR submitted that if the opportunity is granted to the assessee, the assessee will explain the source of cash deposits in the bank.

7. On the other hand, Shri M.K. Verma, appearing on behalf of the department, vehemently defended the impugned orders. The ld. AR submitted that a perusal of Para 5 of the impugned orders would show that several opportunities were given to the assessee by the Commissioner of Income Tax (Appeals). The assessee never responded to the notices and whenever he responded, he sought adjournment. Final opportunity was given to the assessee on 26.10.2016, the assessee never responded to the final opportunity given by Commissioner of Income Tax (Appeals).

8. Both sides heard. It is an undisputed fact that impugned orders have been passed in an *ex-parte* proceedings. The Commissioner of Income Tax (Appeals) has given several opportunities to the assessee to plead his case; however, the assessee never appeared before the Commissioner of Income Tax (Appeals). The Ld. AR has submitted that due to assessee's involvement in criminal case, the assessee suffered mental trauma and hence, the assessee could not attend to the proceedings in the Income Tax Act. Taking into consideration the entire facts and the principles of natural justice, we deem it appropriate to restore these issues back to the file of AO for *de-novo*

adjudication. The AO shall decide this issue afresh after affording reasonable opportunity of hearing to the assessee, in accordance with law.

9. The assessee is directed to cooperate with the AO and participate in the proceedings. The assessee is at liberty to furnish relevant documents to support his claim before the AO.

10. In the result, impugned order is set aside and the appeals of the assessee are allowed for statistical purpose.

Order pronounced on Friday, the 25th day of January, 2019.

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

Sd/-
(VIKAS AWASTHY)
न्यायिक सदस्य/JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 25th January, 2019
Bidhan

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Commissioner of Income Tax (Appeals)-2, Nashik.
4. The Pr. Commissioner of Income Tax-2, Nashik.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य मामला" बेंच,
पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//True Copy//

आदेशानुसार / BY ORDER,

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