

**IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCHES, 'SMC', CHANDIGARH**

BEFORE SHRI N.K. SAINI, VICE PRESIDENT

ITA Nos.639 & 640/Chd/2018

Assessment Year: 2003-04

Shri Hem Raj Rahi
VPO Dharampur
Teh- Sarkaghat
Mandi, H.P.

Vs.

The ITO
Sunder Nagar
H.P.

PAN No. AGJPR8890E

(Appellant)

(Respondent)

Assessee By : Sh. Tej Mohan Singh, Advocate
Revenue By : Smt. Chandrakanta, Sr. DR

Date of hearing : 20/02/2019
Date of Pronouncement : 20/02/2019

ORDER

These two appeals by the Assessee are directed against the separate orders each dt. 23/02/2018 by the Ld. CIT(A), Palampur on quantum addition as well as penalty under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'Act').

2. The common issue raised by the assessee in both these appeals vide ground no. 2 relates to the dismissal of the appeal on the ground of delay in filing the appeal without considering the explanation of the assessee. The said ground read as under:

" 2. That the Ld. Commissioner of Income Tax(Appeals) has erred in dismissing appeal only on the ground of delay in filing of the appeal in utter disregard of the explanation rendered and as such the order passed is illegal and unjustified."

3. The facts of the case in brief are that the Assessing Officer issued notice under section 148 of the Act on 03/09/2008 requiring the assessee to file his return of income. In response the assessee did not file any return, the Assessing Officer framed the assessment ex-parte under section 144 of the Act.

4. Being aggrieved the assessee carried the matter to the Ld. CIT(A) who did not condone the delay and dismiss the appeals of the assessee, the relevant findings of the Ld. CIT(A) read as under:

The appeal has been filed on 06.06.2016 after a delay of about 6 1/2 years. During appeal, the appellant filed an affidavit stating that in the year 2005-06. the appellant had changed his residence from the old address given in the return of income as R/o village Tharohala, Tehsil Sarkaghat, Distt. Mandi to R/o VPO. Barampur, Tehsil Dharampur. Distt. Mandi (H.P) and that because of this he did

not receive any letters or notices from the Income Tax Department. In support, he filed copies of his income tax returns for A.Y. 2005-06, 2006-07 and 2007-08 filed from the changed address, i.e., VPO. Dharampur. He also filed copy of ration card of his wife showing the Dharampur address. In this regard, the assessment records were called from Ld. AO and checked. As per the assessment file, the assessment order u/s 144/148 dated 30.10.2009 and the demand notice for A.Y. 2003-04 were sent to the old address given in the return of income, i.e., village Thola, PO Dhawaii, Teh. Sarkaghat, Mandi and have not been received back undelivered. Prior to it, the notices u/s 148, 143(2) and 142(1) were also sent to the same address and none of these were received back undelivered. Subsequent to the present assessment u/s 147/148, the penalty notice u/s 271(l)(c) dated 30.10.2009, order of penalty u/s 271(l)(c) dated 16.04.2010, notice conveying outstanding demands to the appellant dated 30.12.2013, etc. were also sent to the old address and as per record, none of these was received back undelivered. In view of above, the submission of the appellant that the impugned assessment order and demand notice were not served upon him because of change of address and that he came to know of the demand outstanding against him only in 2016 when his bank account was attached for recovery by Ld. AO cannot be accepted. The delay in filing of appeal is not condoned.

5. Now the assessee is in appeal.

6. The Ld. Counsel for the assessee submitted that since the assessment order was not received by the assessee which was sent on the old address even when it was in the knowledge of the Assessing Officer that the assessee had changed the address and new address was mentioned in the Income Tax Returns for the succeeding years. It was further stated that the delay in filing the appeal before the Ld. CIT(A) was due to the reason that the assessee had not received the assessment order passed by the Assessing Officer ex-parte which has also been admitted by the Ld. CIT(A) who mentioned that the notice issued under section 148, 143(2) and 142(1) were sent on the old address. It was contended that the assessee was prevented by reasonable cause in filing the appeal belated before the Ld. CIT(A) because no assessment order was received by the assessee and whenever the assessee came to know about the outstanding demand in 2016 when his bank account was attached, he immediately filed the appeal before the Ld. CIT(A). So there was a reasonable cause and the Ld. CIT(A) ought to have condoned the delay, if any, in filing appeal and then decide the issue on merit. He requested to set aside the case to the file of the Assessing Officer to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

7. In her rival submissions the Ld. Sr. DR strongly supported the orders of the authorities below and submitted that the assessee did not intimate about the change of address and this plea of the assessee that he was prevented by reasonable cause is not acceptable.

8. I have considered the submissions of both the parties and carefully gone through the material available on record. In the present case it is noticed that the Assessing Officer passed the ex-parte order under section 144 of the Act, however, it is not brought on record as to whether the notice issued under section 148 of the Act was served upon the assessee. The Ld. CIT(A) also dismissed the appeal in limine and did not condone the delay. The explanation of the assessee regarding the change of address appears to be plausible as this contention of the assessee has not been rebutted at any stage. Moreover, the assessee filed his Income Tax Returns of the subsequent year at the changed address. He also filed the copy of the Ration Card of his wife showing the changed address at Dharampur. I therefore considering this fact that the assessee belongs to a remote area and there was change in address, the assessee also filed affidavit before the Ld. CIT(A) in support of his contention. In my opinion the Ld. CIT(A) ought to have condoned the delay, if any, in filing the appeal before her. I, therefore by considering the peculiar facts of this case set aside the impugned order passed by the Ld. CIT(A) and the case is remanded back to the file of the Assessing Officer to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

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

(Order pronounced in the open Court on 20/02/2019.)

Sd/-
(N.K. SAINI)
VICE PRESIDENT

Place: Chandigarh

Dated : 20/02/2019

AG

Copy to: The Appellant, The Respondent, The CIT, The CIT(A), The DR