

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

BEFORE SHRI N.K. SAINI, VICE PRESIDENT

ITA No.1232/Chd/2018
Assessment Year: 2010-11

Balwinder Singh
Gali No. 9, Near Gym Club
Shanti Nagar, Kurukshetra

Vs.

The ITO
Ward-1
Kurukshetra

PAN No. BNBPS6694F

(Appellant)

(Respondent)

Assessee By : Sh. Rohit Goel, CA
Revenue By : Smt. Neha Chaudhary

Date of hearing : 12/03/2019
Date of Pronouncement : 12/03/2019

ORDER

This is an appeal by the assessee against the order dt. 16/01/2017 of Ld. CIT(A), Karnal.

2. The Registry has pointed out that the appeal is barred by limitation by one day. The assessee furnished an application for condonation of delay stating therein as under:

1. *That the appellant is a resident of Kurukshetra and the order of CITA was received on 28/7/2018 and local counsel do not deal with ITAT matters and finally engaged a counsel in September 2018 and immediately deposited fees on 18/9/2018.*
2. *That appeal documents were handed over to courier agency on 25/09/2018 for delivery and same was expected to be delivered on 26/09/2018 as per assurance of courier. However appeal documents were delivered by courier agency to the office of Assistant Registrar on 27/09/2018. Copy of receipt of courier agency is attached herewith.*
3. *That the appeal was filed late by 1 day only due to the mistake of courier agency and it was unintentional.*
4. *That I have not gained any benefit in late filing of appeal and I am keenly interested to pursue the appeal filed on merits.*
5. *Your attention is invited to the following decisions of different courts which suggest that if there is no ill intention the delay should be condoned as held in the case of:*
 - a. *Improvement Trust Ludhiana vs. Ujagar Singh & Ors Civil Appeal No. 2395 of 2008 of June 9, 2010*
 - b. *Jayvantsinh N Vaghela vs. Income Tax officer 40 Taxmann.com 491 (Gujarat)*
 - c. *Paras Rice Mills Kurukshetra vs. CIT Karnal ITA No. 657 of 2009 (P&H)*

The prayer is for condoning the delay in accordance with the facts and circumstances of the case. Your honor is requested to condone the delay in filing of appeal for 1 day.

3. The Ld. DR could not controvert the aforesaid contention of the assessee. I therefore condone the delay of one day and appeal is admitted.

4. Following grounds has been raised in this appeal:

1. *That Ld. CIT(A) has erred in law and facts in confirming the action of Assessing Officer in estimating the income of Rs. 14,03,007/- by applying a Net profit rate of 12% on contractual payments of Rs. 1,16,91,735/-.*

2. *That Ld. CIT(A) has erred in law and facts in confirming the action of Assessing Officer in invoking the provisions of Section 145(3) and completing the assessment u/s 144.*

5. Facts of the case in brief are that the assessee filed the return of income on 21/09/2010 declaring an income of Rs. 5,40,770/- which was processed under section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'Act'), later on the case was selected for scrutiny. Since there was no compliance to the notice issued by the Assessing Officer the assessment was framed ex parte under section 144 of the Act. The Assessing Officer observed that since the assessee had not supplied required information, therefore, he was not satisfied about the correctness and completeness of the account of the assessee. He applied the N.P. rate of 12% on the receipt of Rs. 1,16,91,735/- and worked out the income at Rs. 14,03,010/-. Accordingly on addition of Rs. 8,62,240/- was made.

6. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and submitted that the profit rate applied should have been 8% in view of the provisions contained in section 44AD / 44AF of the Act. The Ld. CIT(A) however did not find merit in the submissions of the assessee and sustained the addition made by the Assessing Officer by observing in para 2.4 of the impugned order as under:

"After going through the facts and submissions it is clear that the appellant has not disputed the rejection of books of accounts but has only argued that the profit rate should be taken at 8%. However, since the appellant is a labour contractor the provisions u/s 44AD and 44AF do not apply to the appellant. Further, the appellant has not disputed as to why the case relied upon by the Assessing Officer was not justified. Accordingly, I do not find any reason to interfere with the addition made by the Assessing Officer. The grounds of the appellant are dismissed."

7. Now the assessee is in appeal.

8. The Ld. Counsel for the assessee submitted that neither the Assessing Officer nor the Ld. CIT(A) appreciated the facts in right perspective. It was further submitted that the N.P. rate of the assessee for the preceding assessment year 2008-09 and 2009-10 were at 3.99% and 4.83% respectively, therefore the N.P. rate applied at 12% by the Assessing Officer was very excessive. It was

further submitted that the books of accounts maintained by the assessee in regular course of business were duly audited, therefore, the addition made by the Assessing Officer and sustained by the Ld. CIT(A) was not justified. It was further submitted that even if the books of accounts were to be rejected the right course was to consider the past history of the assessee.

9. In her rival submissions the Ld. Sr. DR strongly supported the orders of the authorities below and further submitted that the assessee did not cooperate therefore there was no alternative except to frame the assessment under section 144 of the Act. It was further submitted that the Assessing Officer rightly applied the N.P. rate of 12% and the Ld. CIT(A) was fully justified in confirming the same.

10. I have considered the submissions of both the parties and perused the material available on the record. In the present case, it is an admitted fact that the Assessing Officer framed the assessment, ex parte under section 144 of the Act and estimated the income by applying the N.P. rate @ 12%. However no comparable case was cited. In my opinion, the past history of the assessee is to be considered in such type of case. In the present case the Ld. Counsel of the assessee pointed out that the N.P. rates declared by the assessee in the preceding assessment years 2008-09 and 2009-10 were at 3.99% and 4.83% which had been accepted by the department. At the same time it is also noticed that the assessee himself stated before the Ld. CIT(A) that the profit rate of 8% should have been applied in view of section 44AD/44AF of the Act. Therefore, considering the totality of the facts that the Assessing Officer had not given any basis while applying the N.P. rate of 12% and the assessee himself accepted the N.P. rate of 8% before the Ld. CIT(A), the Assessing Officer is directed to apply the N.P. rate of 8% instead of 12% and to work out the addition, accordingly.

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

(Order pronounced in the open Court on 12/03/2019)

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

Place: Chandigarh

Dated : 12/03/2019

AG

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