

IN THE INCOME-TAX APPELLATE TRIBUNAL "E" BENCH MUMBAI
BEFORE SHRI G.S. PANNU, VICE-PRESIDENT AND
SHRI PAWAN SINGH, JUDICIAL MEMBER
ITA No. 5863/Mum/2012 (Assessment Year 2008-09)

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| Mr. Sachin Sharad Pilgaonkar B-609/610, Pearl Apartments Swami Samarth Nagar, Andheri (W), Mumbai-400058. PAN: AAMPP9852H | Vs. | ACIT-11(1), Aayakar Bhavan, M.K. Road, Churchgate, Mumbai-400020. |
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Appellant

Respondent

ITA No. 6625/Mum/2013 (Assessment Year 2010-11)

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| Mr. Sachin Sharad Pilgaonkar B-609/610, Pearl Apartments Swami Samarth Nagar, Andheri (W), Mumbai-400058. PAN: AAMPP9852H | Vs. | ACIT-11(1), Aayakar Bhavan, M.K. Road, Churchgate, Mumbai-400020. |
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Appellant

Respondent

Appellant by : Shri Alok J. Patil (AR)

Respondent by : Shri D.G. Pansari (DR)

Date of Hearing : 22.03.2019

Date of Pronouncement : 29.03.2019

ORDER UNDER SECTION 254(1) OF INCOME TAX ACT

PER PAWAN SINGH, JUDICIAL MEMBER;

1. These two appeal by assessee are directed against the order of Id. Commissioner of Income-tax (Appeals)-3, Mumbai (the Id. CIT(A) dated 24.01.2012 & 19.09.2013 for Assessment Year 2008-09 & 2010-11 respectively. The Id Authorised Representative (AR) for the assessee submits that he is not pressing the ground of appeal in appeal for

assessment year (AY) 2010-11 due to smallness of amount. Therefore, considering the submissions of Id. AR for the assessee the appeal for AY 2010-11 is dismissed as not pressed.

2. In the appeal for Assessment Year 2008-09 the assessee has raised the following grounds of appeal:

1. On the fact and circumstances of the case and in law the Commissioner of Income Tax(A)[CIT(A)] erred in confirming the adjustment of subsidy granted by the State Government amounting to Rs. 24,22,000/- against the cost of the Film which was not released, in the relevant year under consideration and assessed the same as revenue receipt.

2. On the fact and circumstances of the case and in law the Commissioner of Income Tax(A)[CIT(A)] erred in not allowing Cost of Production of the Marathi Feature Film titled "Aahmi Satpute" of Rs.62,59,006/- to be carried forward.

3. Without prejudice to the first ground, On the facts and circumstances of the case and in law the CIT(A) failed to appreciate that even accepting that the subsidy received from the State Government is to be adjusted by reducing the cost of the film, then the same reduced cost ought to be carried forward.

3. Vide letter dated 05.12.2017, the assessee has raised the following additional grounds of appeal:

On the facts and circumstances of the case and in law the AO reduced the subsidy received from the Government of Maharashtra opening cost of the Film/Aahmi Satpute), but failed to reduce it from closing cost of the film.

On the facts and circumstances of the case and in law the benefit of the subsidy received from the Government of Maharashtra during the year would be assessable in the subsequent year when the film (Aahmi Satpute) is exhibited.

4. Perusal of record reveals that the impugned order was passed by Id. CIT(A) dated 24.01.2012, however, the present appeal was filed on 26.09.2012. The registry has pointed out the delay of 179 days in filing of appeal. The applicant/assessee has filed an application for condonation of delay in filing the present appeal. The application is supported by affidavit of the assessee. In the affidavit, the applicant/assessee has contended that the assessee failed to file appeal within the period of limitation as he was under the impression that the necessary steps for filing appeal has been taken by his Chartered Account (CA). This fact for non-filing of appeal came to his notice only when a show-cause notice dated 03.09.2012 under section 274 r.w.s. 271(1)(c) of the Act received to the assessee. The Id. AR of the assessee submits that non-filing of appeal within the period of limitation was neither intentional nor deliberate but due to the bonafide impression that his Chartered Account, who was looking after all his tax matter would have filed the appeal as the said CA was given instruction to take all required step in tax related matter. The applicant/assessee on coming to note about non-filing of appeal immediately filed the present appeal. The Id. AR of the assessee submits that in not filing appeal in time has not given any benefit to the assessee.
5. On the other hand, the Id. DR for the revenue submits that assessee has not explained the delay in proper manner. The assessee has taken a vague ground in the application for condonation of delay. The application for

condonation of delay is liable to be dismissed in absence of reasonable cause shown by the assessee.

6. We have considered the submission of both the parties and perused the application for condonation of delay and the affidavit filed in support thereof. We have noted that the first appeal of the assessee was dismissed by Id CIT(A) on 27.02.2015. However, the appeal was filed only on 05.07.2018. Thus, there is delay of 179 days in filing the present. In support of his condonation of delay, the assessee filed his affidavit explaining the fact that he has engaged Rajesh Sharma, C.A. to take care and attend the assessment proceeding before the Assessing Officer as well as to pursue appeal before the Id. CIT(A). It is the contention of Id. AR of the assessee is that Shri Rajesh Sharma; C.A neither disclosed the outcome of appeal before Id CIT(A) nor filed appeal before the Tribunal within time. The Id. AR of the assessee also contended that not filing of appeal in time would not benefit the assessee rather the assessee is facing hardship and harassment. The assessee has also pleaded that the non filing of the appeal within period of limitation was neither intentional nor deliberate.
7. The Hon'ble Supreme Court in B. Madhuri Goud v. B. Damodar Reddy (2012) 12 SCC 693, by referring various to earlier decisions of Superior

Courts and held the following principal must be kept in mind while considering the application for condonation of delay;

- (i) There should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.
- (ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.
- (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.
- (iv) No presumption can be attached to deliberate cause of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.
- (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.
- (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.
- (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

- (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.
- (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.
- (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such litigation.
- (xi) It is to be borne in mind that no one gets away with fraud, is representation or interpolation by taking recourse to the technicalities of law of limitation.
- (xii) The entire gamut of facts is to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.
- (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

8. Considering the aforesaid legal position and the submission of Id. AR of the assessee that the assessee that non filing of the appeal by assessee in time has not given any benefit to the assessee and the delay in filing appeal was due to bonafide reasons as explained in the application. The application of assessee is supported by affidavit of assessee. Therefore, keeping in view the aforesaid legal points and the principle that when substantial justice and technicalities are pitted against each other the consideration of substantial justice must prevailed. Therefore, keeping in view the principle of natural justice, the delay in filing of the appeal is condoned. Now, we shall proceed to discuss the facts of the appeal on merit.
9. Brief facts of the case are that the assessee is an Actor/Artist working in Marathi as well as Hindi Films, dramas, serials and also producer of feature films and Television Programme under the banner of M/s Kittu Films and M/s Sushriya Arts. The assessee filed his return of income for Assessment Year 2008-09 on 13.10.2008 declaring total income at Rs. 67,11,631/-. The return of income was selected for scrutiny. The assessment was completed under section 143(3) on 25.10.2010 determining the total income at Rs. 93,84,000/-. The Assessing Officer while passing the assessment order treated the financial assistance of Rs. 24,22,000/- of Government of Maharashtra as revenue receipt and further disallowed a sum of Rs. 2,50,367/- paid on account of penalty levied by

Prasar Bharti for delay in delivery of programmes. The Assessing Officer further not allowed the cost of production of Marathi Feature Film “Aahmi Satpute” of Rs. 62,59,007/-. On appeal before the Id. CIT(A), the disallowance of Rs. 2,50,367/- under section 37(1) was deleted, however, remaining two disallowance was upheld. Thus, further aggrieved by the order of Id. CIT(A), the assessee has filed the present appeal before us.

10. We have heard the submission of Id. Authorized Representative (AR) of the assessee and Id. Departmental Representative (DR) for the revenue and perused the material available on record. Ground No.1 relates to addition of Rs. 24,22,000/- treating the financial assistance received from Government of Maharashtra as revenue receipt. **The Id. AR of the assessee submits that now only the additional ground of appeal is subsist and the main grounds of appeal raised by assessee have become infructuous.** The Id. AR submits that the cost of production of film was Rs. 62,59,007/- as on 31.03.2008 which was shown as work-in-progress in the books of account. Film was still under the production and was not released till 31.03.2008. The assessee received Rs. 25,00,000/- as a financial assistance from Government of Maharashtra for financial assistance for Marathi Film Industry. As per the scheme of Marathi Film, producer, who produced their film with their own fund without any Government financial add is entitled to get the financial assistance for their next film up to certain limit of Rs. 30,00,000/- from the State

Government. The assessee received financial statement to assist the assessee to acquire the capital asset. The film was a capital asset in the hand of the film producer. The financial assistance was not given to the assessee for revenue expenditure already incurred for film or to supplement its profit or trade. However, the same was provided to enable the proviso to avail higher state of art gadgets as to produce a film of high technical standard. The Assessing Officer treated the said financial assistance as revenue receipt and also treated the cost of production of the un-production and unreleased film.

11.The ld. AR for the assessee submits that his only prayer is that the amount of the subsidy be reduced from the cost of the feature film produced by the assessee during the financial year ended on 31.03.2008.

12.On the other hand, the ld. DR for the revenue supported the order of lower authorities.

13.We have considered the rival submission of the parties and have gone through the order of authorities below. Considering the submissions of the ld AR for the assessee that he is only pressing the first Additional ground, we note that the assessing officer reduced the amount of subsidy from the cost of film debited in profit and loss account. However, the assessing officer has not reduced the same while arriving at the value of closing stock of the film. This action of the assessing officer is justified, therefore, we direct the assessing officer to adopt the closing stock of the

film also after reducing it by the amount of subsidy i.e. Rs. 24,22,000/- and the balance shall be carried forward as the opening stock of next year. Thus, on this issue the assessee succeeds. In the result the additional grounds of appeal raised by the assessee is allowed.

14. In the result, appeal of the assessee for AY 2008-09 is allowed and appeal for AY 2010-11 is dismissed as not pressed.

Order pronounced in the open court on 29/03/2019.

Sd/-
G.S. PANNU
VICE-PRESIDENT
Mumbai, Date: 29.03.2019
SK

Sd/-
PAWAN SINGH
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "E" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai