

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES “SMC” BENCH: HYDERABAD

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER

ITA. No.887/Hyd/2016
Assessment Year: 2003-04

Addala Chanti, D. No. 8-2-296/82/F/C-43, Plot No.C-43, Road No.11, Film Nagar, Hyderabad-033. PAN: ACXPA 5104 G (Appellant)	vs.	Addl. CIT, Range-13, 2 nd Floor, Aayakar Bhavan, Basheerbagh, Hyderabad. (Respondent)
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For Assessee:	Sri S. Rama Rao
For Revenue :	Smt Neeju Gupta, DR

Date of Hearing :	16/5/2019
Date of Pronouncement :	24/5/2019

ORDER

PER V. DURGA RAO, JM.

This appeal is filed by the assessee against the order of the CIT(A)-9, Hyderabad dated 29/02/2016 for the assessment year 2003-04. In this appeal, assessee raised the following Grounds of appeal:-

“Rs. 3,10,000/- penalty levied u/s 272A(2)(C) of the Act.

The learned Commissioner of Income Tax (A) -9, is not justified in confirming the penalty for the alleged non-filing of statement in Form No. 52A as required u/s.285 B of the IT. Act, 1961, levied for a period of 3100 days commencing from 25.9.2002 to 31.3.2011 @ Rs.100 per day for the following reasons.

- 1. In the facts and circumstances of the case, the levy of penalty is not warranted.*
- 2. The learned Commissioner (A) ought to have appreciated that the penalty proceedings were initiated only through notice dtd.7.1.2011 in respect of film released in the year 2002 and the Appellant could not secure relevant evidence regarding the filing of statement in Form 52A in view of the fact that the then Chartered Accountant could not locate the relevant records.*
- 3. The Appellant's reliance on his then Chartered Accountant in the year 2002-03, who had taken care of all the tax matters like conducting tax audit, filing of the returns etc., would constitute a reasonable cause within the meaning of s.273B and hence the levy of penalty is not justified*

4. *Alternatively, the learned Commissioner (A) ought to have abided by the binding ratio laid down by the jurisdictional High Court in CIT vs U.B. Electronics Instrument [ITA No. 331 of 2003 dtd.12.11.2014] to the effect that even in the absence of provision for limitation for initiating penalty proceedings, the proceedings initiated long after the lapse of the reasonable period are not valid and, as such, the proceedings initiated in the Appellant's case, initiated after more than 3000 days, are not legally tenable.*
5. *5. Any other reason that may be urged at the time of hearing."*

2. At the outset, Learned Counsel for the Assessee brought to our notice that there is a delay of 37 days in filing the appeal before the Tribunal within the prescribed time limit. In this regard explaining the reasons for not filing the appeal within the time limit, Learned Counsel for the Assessee brought our attention to the affidavit filed by the assessee and readout the relevant portions from the petition for condonation of delay. For the sake of ready reference relevant paras are extracted as under:

"For the assessment year 2003-04, the Assessing Officer completed the assessment u/s 143(3) rws 147 of the I.T.Act on 19.03.2010 determining the total income at Rs.17,58,110/- against the admitted of Rs.14,05,681/-. Subsequently, the Addl.Commissioner of Income Tax, Range-13, Hyderabad passed order u/s 272A(2)(c) of the IT Act on 30.03.2011 levying a penalty of Rs.3,10,000/-. Against appeal filed by the appellant against the said penalty order, the Commissioner of Income Tax (Appeals)-9, Hyderabad decided the appeal vide appellate order in ITA No.0108/ Addl.CIT.Range13/2015-16 dated 29.02.2016. The said order was served on 09.03.2016. The due date for filing the appeal before the Hon'ble Income Tax Appellate Tribunal expires by 08.05.2016. However, the petitioner filed the appeal on 14-06-2016 with a delay of 37 days. In this regard, the petitioner humbly submits that the appellate order was handed over to the regular auditors who are looking after the income tax matters of the appellant. The Clerk in the auditor's office paid the appeal fee; got the papers ready for filing and kept the same in his drawer pending signatures of the petitioner. In the meantime, however, he had to rush to his native place to look after the medical needs of an elderly member of the family who has been seriously ill and did not report back to office. Subsequently, on enquiry by the petitioner, the auditors realised that the appeal was not filed due to non communication of the same by the clerk who remained at his native place. By the time, the papers are collected by opening the drawer of the clerk the due date for filing the appeal expired. Finally, the appeal could be filed before the Hon'ble ITAT on 13.06.2016 with a delay of 37 days. The petitioner humbly submits that the delay is for the reasons submitted above which are beyond his control and is not intentional. The petitioner, therefore, prays the Hon'ble commissioner of Income Tax (A) to kindly condone the delay and pass appropriate orders in the matter."

3. On hearing the Learned Counsel for the Assessee and on perusal of the said reasons explained by the assessee for not filing the appeal within the stipulated time, I am of the considered view that there is a reasonable and sufficient cause which prevented the assessee in filing the appeal within the prescribed time limit. Therefore, I condone the delay and proceed to dispose of the appeal on merits.

4. Brief facts of the case are that the assessee is an individual carrying on business as a Film Producer filed the return of income for the A.Y. 2003-04 on 24/11/2003 admitting a total income of Rs. 14,05,681/-. The said return was processed u/s 143(1) of the Act on 18/03/2004. Subsequently, the assessment was reopened u/s 147 as there was escapement of income and notice u/s 148 was issued on 29/06/2009 and the assessment was completed u/s 143(30 r.w.s 147 of the Act on 19/03/2009. Subsequently, the CIT-1, Hyderabad exercising the power u/s 263 of the Act, set-aside the assessment order passed by the assessee u/s 143(3) r.w.s 147 dated 19/03/2009. Ld Commissioner while passed the order u/s 263 of the Act, Ld. CIT observed that as per section 285B of the Act, the assessee is under obligation to file a details of expenditure in Form 52A of the Act and accordingly the assessment passed by A.O. is set-aside and reframed the assessment. Subsequently, the Additional Commissioner of Income Tax (Addl CIT) initiated penalty proceedings u/s 272A(2)(c) of the Act

and issued a show cause notice to the assessee asking him to file Form No. 52A, which has not been filed and for non-furnishing of the details in prescribed form why the penalty cannot be levied vide notice dated 07/01/2011. In response, assessee neither appeared nor filed any explanation for failure to file Form No. 52A and accordingly A.O. levied penalty vide order dated 30/03/2011.

5. On being aggrieved, assessee carried the matter in appeal before the CIT(A). Before the CIT(A) it was submitted that Form No. 52A was missing due to the reason that the earlier Chartered Accountant whose office is at Chennai was handed over the return of income filed by the assessee and other details are with the Learned Chartered Accountant and subsequently, the Chartered Accountant was changed and therefore, the assessee is unable to file Form No. 52A before the A.O. It is also submitted that the penalty notice issued by the Addl. CIT u/s 272A(2)(c) after 6 years and it is submitted that since the said notice issued by the Addl. CIT is beyond the time limit and therefore the same may be quashed and penalty may be deleted and for that he relied on the decision of the Hon'ble jurisdictional High Court judgment in the case of CIT vs. M/s. UB Electronic Instruments Ltd (ITTA No.331 of 2003, dated 12/11/2014). The Ld. CIT(A) after considering the explanation of the assessee, she has confirmed the order of the A.O. by observing that the case law relied on by the assessee relates to the order

u/s 201(1)(A) whereas in the instant case, the matter is with regard to penalty u/s 272A(2)(c) of the IT Act, 1961 for non-filing of Form No.52A. On being aggrieved, assessee carried the matter in appeal before the Tribunal.

6. Learned Counsel for the Assessee strongly relied on Ground No.4 and submitted that the penalty proceedings were initiated by the Addl. CIT u/s 271A(2)(c) after 6 years 7 months and penalty order was passed after 6 years 9 months which is invalid and submitted that the same may be cancelled. He also relied on the judgment of the Hon'ble Delhi High Court in W.P. No.2166/2012 in Bharti Airtel and Another vs. UOI, 76 Taxmann.com 256 (Delhi.)

7. Both the parties were heard, perused the orders of the lower authorities and the material on record. In this case, the assessee has filed return of income for A.Y. 2003-04 on 24/11/2003 and the same was processed u/s 143(1) on 18/03/2004. Subsequently, the assessment was reopened u/s 143(3) r.w.s 147 of the Act on 19/03/2010, The Assessing Officer has not referred anything about the penalty u/s 272A(2)(c). Subsequently, the Ld. Commissioner while exercising the power u/s 263 of the Act, set-aside the order passed by the A.O. u/s 143(3) r.w.s 147 of the Act dated 19/03/2010. While passing the order, the Learned Commissioner observed that it is the obligation on the part of the assessee to file the details of expenditure

in Form No. 52A and no such details were filed. Based on the observation of the Learned Commissioner, the Addl. CIT issued a show cause notice dated 07/01/2011 and penalty order was passed on 30/03/2011. I find that the very 263 order which is the basis for initiation of the penalty proceedings has been quashed by ITAT in ITA No.492/Hyd/2011, dated 26/10/2016. I further find that the return filed by the assessee was processed u/s 143(1) of the Act on 24/11/2003 after a lapse of 6 years 7 months and the penalty notice was issued on 07/01/2011 and accordingly the order was passed on 30/03/2011 after lapse of 6 years 9 months. I find that during the reopening proceedings also there is no any reference with regard to the non-filing of the details of expenditure in Form No. 52A. It is only in consequent to the order passed by the Learned Commissioner u/s 263, the penalty is initiated and the said 263 order was set-aside by the Hon'ble Tribunal (supra). In this context, the hon'ble jurisdictional High Court has considered the time limit for initiation of penalty proceedings u/s 201 and observed that though the said section do not prescribe any time limit for recovery of the amount representing deduction of tax at source, the penal action can be initiated against assessee within a reasonable period of 4 years and since the proceedings were initiated against the assessee after 7 years, therefore, the same was barred by limitation having been initiated beyond a reasonable period of time limit of four years. Though the decision of the Hon'ble jurisdictional High

Court relates to section 201, the Hon'ble High Court has observed that where there is no time limit prescribed in the Act, the reasonable time limit for initiation of proceedings is 4 years. In another case, Visakhapatnam Bench of the Tribunal in ITA No.119/Vizag/2016 in the case of Bheemarasetty Sunitha vs. DDIT for the A.Y. 2008-09 vide order dated 23/06/2017 it was held that the order u/s 201 / 201(1A) of the Act should not be passed by considering the judgment of the Delhi High Court in the case of Bharti Airtel and Another vs. UOI, 76 taxmann.com 256 (Delhi). Relevant portion of the order is extracted as under:

"6. We have heard both the parties and perused the materials placed on record. The relevant provisions of section 201(1A) of the Act is reproduced as under:

"201(1A) 1 Without prejudice to the provisions of sub- section (1), if any such person, principal officer or company as is referred to in that subsection does not deduct or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest at 2 fifteen] per cent per annum on the amount of such tax from the date on which such tax was deductible to the date on which such tax is actually paid.]"

7. *The Hon''ble Delhi High Court while deciding the writ petition in the case of Bharti Airtel & Another rendered the judgement considering the statement of Objects and Reasons of the Finance (No.2) Bill, 2009. In respect of time limit, Hon''ble Bombay High Court has considered the issue in detail and held that 6 years is reasonable period for initiating the action u/s 201 and 201(1A).*

The Hon''ble Delhi High Court in the decision relied upon by the Assessee considered the issue with regard to the limitation of time for initiating the proceedings u/s 201/201(1A) and held that 4 years is the reasonable time for initiating proceedings u/s 201/201(1A). While holding so, the Hon''ble High Court has relied on the decision of CIT Vs. NHK Japan Broadcasting Limited [305 ITR 137] and the CIT Vs. Hutchison Essar Telecom. Limited [323 ITR 330], Further, Hon''ble Delhi High Court has considered amendment made to Section 201 of the Act vide Finance Bill, 2009 and viewed that the Parliament did not make any amendment to the time limits for the non residents which indicates that the Parliament has accepted the judicial pronouncements for the limitation period already set out by the courts. The Hon''ble Delhi High Court also considered the decision of Hon''ble Supreme Court in the case of GE India Technology Centre Vs. CIT (2010) (10) SCC 29, wherein, the Hon''ble Supreme Court held that the proceedings should be initiated u/s 201/201(1A) within reasonable period and it cannot extend without limitation. After considering the decision of the Hon''ble Supreme court in GE India Technology and the Vodafone Essar Mobiles Ltd. the Hon''ble Delhi High Court followed its own decision in the case of CIT Vs. NHK Japan Broadcasting Limited (supra) and held that 4 years

is the reasonable period for initiating the proceedings u/s 201/201(1A) of IT Act. The Ld. DR relied on the decision of Hon"ble Bombay High Court in the case of Mahindra & Mahindra Ltd. Considering the Hon"ble Supreme court decision in CIT Vs. Vegetable Products Ltd., 88 ITR 192 (SC) and CIT Vs. Karamchand Premchand Ltd (1960) 40 ITR 106, we are also of the view that the decision favourable to the assessee is required to be taken. Accordingly following the decision of Hon"ble Delhi High Court we hold that reasonable period is 4 years for initiating of proceedings u/s 201/201(1A).

In the instant case the property was registered on 18.7.2007 and the assessee is liable to deduct the TDS during the F.Y.2007-08 and the 4 years time limit for initiating action u/s 201/201A expires before March 2012. In the instant case, notice u/s 195 treating the assessee as assessee in default was issued on 11.08.2013 beyond the 4 years of the financial year in which the assessee required to deduct tax at source. As held by Hon"ble Delhi High Court, the time limit for initiating the proceedings u/s 201 and 201(1A) is 4 years and it is barred by limitation. Therefore, following the decision of Hon"ble Delhi High Court, we are unable to sustain the orders of the lower authorities. Accordingly, the order passed u/s 201 / 201(1A) is set aside and the appeal of the assessee is allowed."

8. I therefore considering the facts and circumstances of the case find that the initiation of proceedings u/s 272A(2)(c) by the Addl. CIT after 6 years 7 months is not within a reasonable period of 4 years as per the jurisdictional High Court and also as per the Hon"ble Delhi High Court (supra). Therefore, in view of the above, the penalty confirmed by the CIT(A) cannot survive and the same is cancelled. Accordingly, appeal filed by the assessee is allowed.

9. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 24th May, 2019.

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Hyderabad, Dated: 24th May, 2019.

OKK, Sr.PS

Copy to

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