

IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR

BEFORE SH. N.K.CHOUDHRY, JUDICIAL MEMBER AND  
SH. O.P.MEENA, ACCOUNTANT MEMBER

**ITA Nos. 92 & 93/Asr/2017**

Assessment Years: 2008-09 & 2009-10

**ITA Nos. 162 & 163/Asr/2017**

Assessment Years: 2008-09 & 2009-10

Sh. Sat Pal Sharma  
Prop. M/s Sat Pal and Co.  
93, Fruit Mandi Narwal,  
Jammu.

Vs.

Income Tax Officer,  
Ward 1(3), Jammu.

[PAN:ACUPS 4375C]

**(Appellant)**

**(Respondent)**

Appellant by : None

Respondent by : Smt. Raman Damathia (Ld. DR)

Date of hearing : 18.12.2019

Date of pronouncement : 18.12.2019

**ORDER**

**PER N.K.CHOUDHRY, JM:**

The assessee has preferred the instant appeals against the impugned orders dated 01.02.2016 & 08.08.2016 respectively passed u/s 250(6) & 154 of the Income Tax Act, 1961 , by the Ld. CIT(A), Jammu (J&K) (hereinafter called as the 'Act').

**2.** At the outset, it was observed that there is a delay of 89 days for filing of ITA Nos.92 and 93/Asr/2017 and 69 days in filing of ITA Nos.162 and 163/Asr/2017.

**3.** As the issue and facts of all the appeals under consideration are similar and identical, therefore, for the sake of

brevity all the appeals have been taken simultaneously for adjudication by this composite order and for brevity the facts of ITA No.92/Asr/2017 shall be taken into consideration as a lead case.

#### **4. CONDOATION OF DELAY**

In the instant case, the assessee had challenged the assessment order passed by the ITO, Ward-1(3), Jammu u/s 147/143(3) of the I.T. Act, 1961. During the pendency of the said appeal Direct Tax Dispute Resolution Scheme, 2016 (hereinafter referred to as '**the Scheme**') was incorporated in the Finance Act, 2016 which provided an opportunity to Tax Payers who were under litigation and whose appeals were pending as on 29<sup>th</sup> Feb. 2016, to come forward and settle the dispute in accordance with the provisions of the scheme, therefore, in order to avail the benefit of the scheme, the assessee on the wrong advice of his counsel to the effect that before proceeding to the scheme, the appeals are supposed to be withdrawn, as the declaration to be filed under the Dispute Resolution Scheme, the assessee had withdrawn the appeals pending before the Ld. CIT(A) by mentioning the facts :

***"Withdrawal of appeal is mandatory to proceed the case matter under DIRECT TAX DISPUTE RESOLUTION SCHEME, 2016 specified under chapter XI OF THE FINANCE ACT, 28 of 2016, as the Assessee wants to pursue his case under the Scheme".***

**4.1** In that eventuality, the appeals of the assessee were allowed to be withdrawn by the Ld. CIT(A) vide order dated

08.08.2016. Subsequently on 27.12.2016 the assessee had filed an application u/s 203 of the Finance Act, 2016 for availing the benefit of Direct Tax Dispute Resolution Scheme before the Ld. Pr. Commissioner of Income Tax, J&K, which was dismissed by the Ld. Pr. Commissioner of Income Tax, Jammu (J&K) by holding as under:

***"Perusal of relevant record revealed that you preferred an appeal before the CIT(A), Jammu against the assessment order dated 24.02.2015 which was disposed off on 08.08.2016 vide order passed in appeal No.430/14-15. Since, appeal stand disposed off before filing of application under scheme, the application cannot be entertained.***

**4.2** Thereafter, on the advice of new Counsel Sh. Subhash Dutt, Advocate of the assessee, the assessee preferred an application u/s. 154 of the Act for rectification of the order on the ground that as per instruction of the CBDT issued vide letter F. No.279/Misc/M-30/2016 dated 30.03.2016 whereby the CBDT had directed all the Commissioners of Income Tax (Appeals) to keep the appeals pending where the appellants express their intention to avail the scheme. However, the Ld. CIT(A) dismissed the rectification application filed u/s 154 by the assessee vide its order dated 1<sup>st</sup> Feb., 2016, order, which was received by the assessee on 3<sup>rd</sup> Feb., 2017. As the assessee had filed an application u/s 154 of the Act, therefore could not challenge the order dated 08.08.2016 passed in First Appeal before the ITAT and subsequently the instant appeal was filed on 20.02.2017 and consequently, the delay of 89 days has been occurred in filing of the instant appeal.

**5.** The Revenue Department though did not refute the facts as narrated by the assessee, however, submitted that the assessee cannot be allowed to take the wrong advice of the counsel as a base for condonation of delay.

**6.** Having considered the narrated facts above and applied our independent mind on the facts and circumstances of the case, we are of the considered view that the assessee was prevented to file the statutory appeal, within limitation period due to wrong advice of his counsel which is apparent from the documents and orders available on record. Therefore, considering the peculiar facts and circumstances specifically that for availing of the benefit of the scheme, the assessee was not supposed to withdraw the appeals pending before the Ld. CIT(A) and as per Circular it was mandated to keep alive the appeal filed if any before the Ld. CIT(A), hence, we find it feet case for condonation of delay. Consequently the delay of 89 days in filing the instant appeal stands condoned. Resultantly the delay occurred in filling of all appeals under consideration stands condoned.

**7. MERITS OF THE CASE**

Coming to the merit of the case, as we have already observed above that for availing the benefit of scheme there was no necessity to withdraw the appeal pending if any before the Ld. CIT(A) in view of Direct Tax Dispute Resolution Scheme, 2016, vide Finance Act, 2016 issued vide Circular dated 30.03.2016, however, the assessee on wrong advice of his counsel withdrawn his appeal against the assessment order

dated 24.02.2015 passed u/s 147/143(3) of the I.T. Act and the Ld. CIT(A) dismissed the appeal as withdrawn vide its order dated 08.08.2016. Hence, considering the peculiar facts and circumstances, specifically to the effects that appeal was withdrawn inadvertently and on miscommunication or lack of understanding the terms of the circular referred above and even the Ld. CIT(A) did not pass the order on merit , we are inclined to set aside the impugned order passed by the Ld. CIT(A) and restore the matter back to the file of the Ld. CIT(A) for decision afresh, suffice to say while affording reasonable opportunities of being heard to the assessee. Consequently, the appeal filed by the assessee is liable to be allowed.

**8.** Resultantly, both appeals in ITA Nos.92 & 93/Asr/2017 stands allowed for statistical purposes.

**9.** Now coming to ITA Nos.162 & 163/Asr/2019 which pertains to challenge the order passed u/s 154 of the Act, the same stands dismissed on becoming infructuous in view of the order passed in ITA Nos. 92 & 93/Asr/2017.

**10.** In the result, all the appeals filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open Court on 18/12/2019.

Sd/-  
(O.P.MEENA)  
ACCOUNTANT MEMBER

Sd/-  
(N.K.CHOUDHRY)  
JUDICIAL MEMBER

Dated: 18/12/2019.

/PK/ Ps.

Copy forwarded to:

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2. The Respondent
3. The CIT
4. Then CIT(Appeals)
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By Order