

IN THE INCOME-TAX APPELLATE TRIBUNAL “SMC” BENCH MUMBAI
BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER AND

SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 6609/Mum/2018 (Assessment Year 2009-10)

Jayesh H. Shah, 309, Pratik Avenue Nehru Road, Ville Parle (E), Mumbai-400057 PAN: AAFPS5426F	Vs.	ACIT-21(1) C-10, Pratyakshakar Bhavan, Bandra (E), Mumbai-400051.
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Appellant

Respondent

Appellant by : None

Respondent by : Shri Satishchandra Rajore (DR)

Date of Hearing : 24.02.2020

Date of Pronouncement : 24.02.2020

ORDER UNDER SECTION 254(1) OF INCOME TAX ACT

PER PAWAN SINGH, JUDICIAL MEMBER;

1. This appeal by assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-53, Mumbai [Id. CIT(A)] dated 10.09.2018 for Assessment Year 2009-10. The assessee has raised the following grounds of appeal:

1. CIT[A] has erred in not condoling delay where the appellant was prevented by sufficient cause
2. CIT[A] has not taken in to account that appellant has filed first appeal against order u/s 147 read with 143[3] during course of hearing of that appeal appellant has realized that appeal against the original order u/ s 143[3] has to be filed hence it was delay.
3. CIT[A] has not taken into account the order u/s 154 is passed after order under u/ s 143[3] r.w. 147 is passed. appellant has already filed appeal against the order u/ s 143[3] r.w. 147 .
4. CIT[A] has not taken into account that AO has disallowed u/s 14A Rs 159931/ - against the exempted income claimed by the assessee Rs 1942/ -

disallowance cannot be more than exempted income hence Appellant has applied for rectification order under section 154 is passed after passing of order u/ s 143[3] r.w 147.

2. Brief facts of the case are that the assessment for Assessment Year 2009-10 was completed under section 143(3) on 31.10.2011. During the assessment, the Assessing Officer noted that the assessee has earned exempt income of Rs. 1942/-. The Assessing Officer further noted that assessee has not made any suo-moto disallowance for earning exempt income. The Assessing Officer invoked the provision of Rule 8D and made a total disallowance of Rs. 1,59,931/-, the disallowance consists of interest disallowance of Rs. 1,56,697/- and indirect disallowance @ .5% of average value of investment of Rs. 3,224/- thereby total disallowance of Rs. 1,59,931/-. No first appeal was filed by assessee within period of limitation. The assessee filed appeal before the Id. CIT(A) only on 27.02.2017. The appeal was filed after 1927 days of prescribed period of limitation. In support of condonation of delay, the assessee stated before Id CIT(A) that the assessee was pursuing alternative remedy under section 154. It was also urged that there is no benefit to the assessee in filing late appeal. It was explained that the assessee filed an application under section 154 which was decided on 02.06.2015. The explanation offered by assessee for condonation was not accepted by Id. CIT(A). The Id CIT(A) took his view that assessee has not explained the delay. It was further held that the application under section 154 was disposed on 02.06.2015 and even after disposal of rectification

application the appeal is filed belatedly. Resultantly, the delay was not condoned and appeal was not admitted for hearing. Further aggrieved, the assessee has filed the present appeal before us.

3. None appeared on behalf of assessee nor is application for adjournment was filed. Perusal of record reveals that assessee has filed written submission on record. In the written submission, the assessee stated that there was sufficient cause for condoning the delay as delay was not intentional or due to negligent. During the course of hearing in appeal filed by assessee against the order under section 143(3) r.w.s 147 and the order under section 154. The assessee realized of filing the delay against both the orders. The assessee prayed for condonation of delay. The assessee has relied on the decision of Collector of Land Acquisition vs. Mst Katiji [167 ITR 471 (SC)] and order of Pune Tribunal in Gera Developments (P.) Ltd. [181 TTJ 510 (Pune Trib.)].
4. On the other hand, the Id. Departmental Representative (DR) for the revenue submits that neither the assessee has come forward nor explained the delay in filing the appeal. The assessee has not disclosed any reasonable cause for seeking condonation of delay before the First Appellate Authority (FAA). The assessee has not filed the copy of application filing before the FAA for seeking condonation of delay.
5. We have considered the submission of Id. DR for the revenue and the written submission of assessee on record. We have also deliberated on the

case law relied by assessee in its written submissions. The assessment under section 143(3) was completed on 31.10.2011, the Assessing Officer while passing the assessment order made the addition/disallowance under section 14A of Rs. 1,59,930/-. No appeal was filed against the addition in the assessment order before Id CIT(A). We have noted that the assessee filed a petition/application under section 154 for rectification against the addition/disallowance under section 14A. The application of the assessee under section 154 was dismissed on 02.06.2015. The assessee filed appeal before the Id. CIT(A) only on 27.02.2017 for challenging the disallowance under section 14A. The Id. CIT(A) dismissed the appeal by taking view that the assessee has not explained the inordinate delay. It was further held by Id. CIT(A) that the assessee has not explained the delay even after dismissal of rectification application. Before us neither the assessee has explained the delay nor filed any documentary evidence or copy of application filed before the Id. CIT(A) in seeking condonation of delay. Thus, we do not find any justifiable reason in seeking the condonation of delay before the Id. CIT(A).

6. The ratio in the case law relied by assessee in Collector of Land Acquisition vs. Mst Katiji (supra) and in Gera Developments (P.) Ltd. (supra) is not helpful to the assessee as the facts in both the case law are different. The assessee in this case was aware about the disallowance under

section 14A, which was not hesitated by him by filing appeal before first appellate authority.

7. Resultantly, we do not find any merit in the grounds of appeal raised by assessee.
8. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 24/02/2020.

Sd/-
R.C. SHARMA
ACCOUNTANT MEMBER

Sd/-
PAWAN SINGH
JUDICIAL MEMBER

Mumbai, Date: 24.02.2020

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Copy of the Order forwarded to :

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

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai