

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH
(VIRTUAL COURT)

श्री एन.के.सैनी, उपाध्यक्ष एवं श्री आर.एल. नेगी, न्यायिक सदस्य
BEFORE: SHRI. N.K.SAINI, VP & SHRI , R.L. NEGI, JM

आयकर अपील सं./ ITA NO. 113/Chd/2021

निर्धारण वर्ष / Assessment Year : 2013-14

Mining Officer B-65, Phase-7, Mohali-160070, Punjab	बनाम	The ITO (TDS)-2 2 nd Floor, C.R. Building Sector-17-E, Chandigarh-160017
स्थायी लेखा सं./PAN NO: PTLM12857F		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Yogesh Monga, CA

राजस्व की ओर से/ Revenue by : Shri Ashok Khanna, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 29/07/2021

उद्घोषणा की तारीख/Date of Pronouncement : 30/07/2021

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

This is an appeal filed by the Assessee against the order dt. 25/03/2021 of the Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi.

2. The Registry has pointed out that there is delay of 23 days in filing the appeal by the assessee. The assessee moved an application for condonation of delay which read as under:

Subject: Condonation of delay in submission of appeal ITA No. 112/Chandi/2021 A.Y. 2012-13 in the case of Mining Officer versus ITO (TDS)-2, Chandigarh filed on 24-05-2021- Request for

The order of Commissioner (Appeals) dated 02/03/2021 for assessment year 2012-13 relevant to Financial year 2011-12 was received by this office. Thereafter this office, approached the counsel to file the appeal but due to lockdown imposed by the administration due to increase in number of covid cases, the appeal

could not be filed in time and the delay of 23 days was happened in filing the appeal. The affidavit detailing the aforementioned facts and circumstances may kindly be placed before the Hon'ble appellate tribunal for condonation of the short delay in submission of the appeal.

Your faithfully

*For Mining Office, Mohali and Ropar
Sd/-
(Mining Officer)*

3. During the course of hearing the Ld. Counsel for the Assessee submitted that delay occurred due to COVID-19 Pandemic situation which was beyond the control of the assessee. He relied the judgment of the Hon'ble Apex Court dt. 08/03/2021 in Suo Motu Writ Petition (Civil) No. 3 of 2020, copy of the said judgment was furnished which is placed on record.

4. In his rival submissions the Ld. DR could not controvert the aforesaid contention of the Ld. Counsel for the Assessee.

5. We have considered the submissions of both the parties and perused the material available on the record. In the present case it is noticed that delay of 23 days in filing the appeal happened due to COVID-19 Pandemic situation. For the purposes of the limitation period in filing the appeal in such cases, the Hon'ble Apex Court in the aforesaid referred to suo motu writ petition vide order dt. 08/03/2021 held as under:

2. We have considered the suggestions of the learned Attorney General for India regarding the future course of action. We deem it appropriate to issue the following directions:-

1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.

2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all person shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.

3. The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisions (b) and(c) of Section 138 of the Negotiable instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, other limits (within which the court or tribunal can condone delay) and termination of proceedings.

4. The Government of India shall amend the guidelines for containment zones, to state.

"Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements."

We therefore by keeping in view the ratio laid down by the Hon'ble Apex Court in the aforesaid referred to judgment dt. 08/03/2021 condone the delay and the delay is admitted.

6. Following grounds have been raised in this appeal:

"1. That the order of Learned Assessing Officer is bad, and against law and facts.

2. That the Learned Commissioner of Income Tax (appeal) has erred by not condoning the delay of 45 days despite of fact that there was no lapse on part of appellant & delay was caused due to fact that the date of receipt of assessment order was wrongly taken by staff of counsel.

3. That the Learned Commissioner of Income Tax (Appeal) has erred by confirming the demand of Rs. 18,33,376/- made by assessing officer vide para no. 14 to 15 of assessment order.

4. That the appellant craves leave to add, amend, alter or withdraw any ground of appeal before final hearing."

From the aforesaid grounds it is gathered that the main grievance of the assessee relates to the dismissal of the appeal by the Ld. CIT(A) in limine.

7. Facts of the case in brief are that the A.O. on TDS verification under section 133A(2A) of the Income Tax Act, 1961 (for short the 'Act') found that there were certain discrepancies and that the complete TCS as required under the Act would either not being collected by the person responsible or not being deposited to the Central Government Account within the stipulated time. The

A.O. raised the demand of Rs. 18,33,376/- by observing that the assessee failed to collect the TCS on Rs. 4,67,69,807/- by passing the order on 20/03/2020.

8. Being aggrieved the assessee preferred an appeal to the Ld. CIT(A) National Faceless Appeal Centre (NFAC), Delhi wherein the appeal was dismissed in limine for the reason that there was a delay of 45 days in filing the appeal.

9. Now the assessee is in appeal.

10. Ld. Counsel for the Assessee submitted that the delay in filing the appeal happened due to Lockdown which was laid down on the spread of COVID-19 and the Hon'ble Supreme court by taking the cognizance of the COVID-19 Pandemic situation extended the period of limitation from time to time. However the Ld. CIT(A) without considering the above facts dismissed the appeal of the assessee in limine.

11. In his rival submissions the Ld. DR supported the order of the Ld. CIT(A) however could not controvert the aforesaid contention of the Ld. Counsel for the Assessee.

12. We 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 A.O. passed the order on 20/03/2020 and the Hon'ble Apex Court vide order dt. 23/03/2020 extended the period of limitation prescribed under the general law or special laws whether compoundable or not with effect from 15/03/2020 the said period was further extended time to time. However the Ld. CIT(A) without considering the aforesaid order of the Hon'ble Apex Court, did not condone the delay which he ought to have done. We therefore deem it appropriate to set aside this case back to the file of the Ld. CIT(A) to be adjudicated afresh in accordance with law after condoning the delay of 45

days in filing the appeal before him and by providing due and reasonable opportunity of being heard to the assessee.

13. In the result, appeal of the Assessee is allowed for statistical purposes.

(Order pronounced in the open Court on 30/07/2021)

Sd/-

आर.एल. नेगी
(R.L. NEGI)

न्यायिक सदस्य/ Judicial Member

AG

Date: 30/07/2021

Sd/-

एन.के.सैनी,
(N.K. SAINI)

उपाध्यक्ष / VICE PRESIDENT

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar