

THE INCOME TAX APPELLATE TRIBUNAL
"C" Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Ravish Sood (JM)

I.T.A. No.430/Mum/2020 (Assessment Year 2014-15)

Piyush Kishandut Agarwal 4C, Janakdeep, J.P.Road Seven Bugalows, Andheri(W) Mumbai-400.061 PAN : ADCPA7030P (Appellant)	Vs.	ITO, Circle-16(3)(2) Room No.448, Aaykar Bhawan M.K.Road Mumbai-400 020 (Respondent)
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Assessee by	Shri Jigar Mehta
Department by	Ms. Shreekala Pardeshi
Date of Hearing	31.08.2021
Date of Pronouncement	02.09.2021

O R D E R

Per Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-7 dated 22.11.2019 and pertains to assessment year 2014-15. The assessee is aggrieved by the Ld.CIT(A) order, where he has not condoned the delay in filing. Still he has decided the issue against the assessee. Further, Ld.CIT(A) has failed to adjudicate one of the ground raised before him.

2. In this case assessee has raised following grounds before Ld.CIT(A).

1. On the facts and circumstances of the case and in law the learned Assessing Office (AO) erred in levying penalty of Rs. 9,79,910/- u/s 271(1)(c) without affording due opportunity to the appellant to file her submissions. The act of the learned AO is in violation of principles of natural justice.
2. On the facts and circumstances of the case and in law the notice issued by learned A.O for levying of penalty u/s 271(1)(c) of the Act, r.w.s 274 is bad in law since in the notice he has not mentioned whether penalty proceedings are initiated for concealment or inaccurate particulars of income.
3. On the facts and circumstances of the case and in law the learned! AO die! not appreciate that the appellant had provide her correct Income Tax PAN at the time of

registration of the Agreement hence it was never her intention not to disclose the said transaction to the I T department. The learned AO further did not appreciate that it is a case of error and not a case of a concealment of income since information was already provided to the Income Tax department. The appellant prays that the penalty be deleted.

3. There was a delay of 176 days in filing appeal before Ld.CIT(A). Assessee has submitted following condonation petition to the Ld.CIT(A).

1. That I am assessed to tax under Income tax PAN - ADCPA 7030 P since past many years.
2. That during the year 2013-14 relevant to A.Y. 2014-15 I had sold one property at Mumbai and while registration of the property I had also provided my Income Tax PAN. However at the time of filing my Income Tax return due to oversight the sale of property remained to be reported in the Income Tax return.
3. That I have paid all due taxes on the Capital Gains but penalty proceedings were initiated by the Assessing Officer simultaneously. The Notice for hearing was received on 15.6.2017 where date of hearing fixed on 9.6.2017. However during the said period I was out of India and accordingly could not attend the hearing.
4. That the learned AO levied the penalty vide his order dtd. 29.6.2017 presuming that I am not interested in giving any submission. The said order was received by me on 4.7.2017 and the due date for filing appeal was 2.8.2017. Since I was out of India and on returning back in India my husband was very much sick and hence I could not prefer appeal in time.
5. That now I am preferring the appeal against the order of the Assessing Officer and there is a delay of 176 days. I say and submit that the delay in filing appeal is for the bonafide reasons and purely unintentional and has been caused due to ill health of my husband. I say and submit that no prejudice would be caused if the delay is condoned and the appeal is decided on its merit by the Hon'ble Commissioner of Income Tax (Appeal) - 7, Mumbai. In the aforesaid circumstances, I respectfully submit that the present application for condonation of delay be allowed.

4. Ld.CIT(A) did not condone the delay. Thereafter holding that he was not condoning the delay, he went onto uphold the AO' order confirming the penalty. However, he did not adjudicated ground No.2 above.

5. Against the above order, assessee is in appeal before us. We have heard both the parties and perused the record. We note that Ld.CIT(A) has passed an order, which is not as per law. The Ld.CIT(A) has rejected the assessee's condonation petition. Once delay is not condoned appeal stands dismissed in limine. Ld.CIT(A) then could not have adjudicated upon the merits. Though, in our considered opinion, the delay of 176 days on the facts and circumstances ought to have been condoned. We condone the same as such. Even, when Ld.CIT(A) proceeded to uphold the merit of AO's order, he committed a mistake of not adjudicating ground No.2 above, which challenged the very jurisdiction of the AO's order.

6. We note that, Hon'ble Madras High Court in CIT vs. Ramdas Pharmacy 77 ITR 276 has held that an appellate authority cannot decide only one issue arising out of many issues and decline to go into the other issues raised before it on the ground that further issues will not arise in view of the finding on the issue decided by it. It was expounded that if the appellate authority declines to consider and decide the other issues it could only protract and delay the proceedings, for the assessee has to get the decision of the appellate authority on the initial point set aside by approaching a higher appellate authority and thereafter again go before the appellate authority for the decision on the other issues left undecided by it earlier. It was held that this will amount to multiplication proceedings under the Act. It was further expounded that subordinate courts and Tribunals should as far as possible give their views on all the points raised before them so that the higher courts will have the benefit of the decision on other points also if the necessity arises.

7. Examining the present issue on the touchstone of above said case law, we find that the order of Ld.CIT(A) here directly falls under the ambit of Hon'ble High Court's order as above. Ld.CIT(A) has decided one issue and has left undecided another issue duly raised before him. Hence, we are of the

considered opinion that this issue [ground No.2 before CIT(A)] raised by the assessee needs to be remitted to the file of learned Ld.CIT(A). Ld.CIT(A) is directed to complete his appellate order by deciding on this issue, which was duly raised before him by the assessee. After the order of Ld.CIT(A) is complete upon adjudication of this issue, both the parties will be at liberty to file necessary appeals as and if necessary.

8. Accordingly, this issue is remitted to the file of Ld.CIT(A). In view of our order remitting the jurisdictional issue to the file of Ld.CIT(A) so as to complete his order. Other issues raised in this appeal is not being adjudicated.

9. In the result, assessee appeal is allowed for statistical purpose.

Pronounced in the open court on 02.09.2021.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 02/09/2021
Thirumalesh, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai