

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'SMC' AT KOLKATA
[BEFORE SHRI P.M. JAGTAP, HON'BLE VICE-PRESIDENT (KZ)]

[THROUGH VIRTUAL COURT]

I.T.A. No. 293/Kol/2020

Assessment Year: 2014-15

Bishnu Kumar Agarwal.....*Appellant*
132A, Raja Rajendra Lal Mitra Road,
2nd Floor, Flat-2B, Beliaghata, Phool Bagan,
Kolkata - 700 085.
[PAN: ACVPA 5344 G]

Vs

ITO, Ward - 46(1), Kolkata.....*Respondent*

Appearances by:

Shri Manju Shukla, AR appearing on behalf of the Assessee

Shri Jayanta Khanra, JCIT, Sr. DR appearing on behalf of the Revenue:

Date of concluding the hearing : November 09, 2021

Date of pronouncing the order : November 09, 2021

ORDER

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals) - 14, Kolkata dated 27.06.2018 and the solitary issue involved therein relates to the addition of Rs. 5,37,476/- made by the AO and confirmed by the Ld. CIT(A) on account of unexplained investment.

2. At the outset, it is noted that there is a delay of 557 days on the part of the assessee in filing this appeal in as much as this appeal is filed by the assessee only on 11.03.2020 as against 03.09.2018 by which it was required to be filed. In this regard, the ld. counsel for the assessee has invited my attention to the affidavit of the assessee dated 24.07.2020 placed on record seeking condonation of the said delay on the ground that all the necessary documents along with the relevant order of the Ld. CIT(A) were handed over to the original AR, but since

the said authorised representative failed to file the appeal, there was a delay and the appeal was filed ultimately by the new authorised representative appointed by the assessee. When she was asked to inform the date on which the necessary documents along with the relevant order of the Ld. CIT(A) were handed over to the original AR for filing an appeal before the Tribunal, there was no definite answer which could be given. There is also no evidence brought on record to support and substantiate the assessee's averment made in the affidavit that the necessary documents were handed over to the original AR. It is also noted that there are two separate applications filed by the assessee seeking condonation of the said delay which are placed on record. In one of the applications, the reason given for the delay is due to the sudden breakdown of the photocopier machine because of which photocopies of the necessary documents could not be taken while the reason given for delay in other application is due to the health issues of the assessee. The assessee thus has taken different stand at different point of time for seeking condonation of the delay which is contrary to the reason given in the affidavit filed by the assessee making certain specific averments on oath. It is also noted that the appeal papers in Form No. 36 are signed by the assessee on 04.03.2020 and even the filing fees is paid by the assessee on 03.03.2020. This clearly shows that the reason given by the assessee in the affidavit for condonation of delay is not correct and convincing and the attitude of the assessee is very casual and negligent. It is no doubt true that the expression "sufficient cause" is required to be construed liberally and the discretion to condone the delay should be exercised judiciously to further substantiate the cause of justice. However it is also true that the assessee seeking exercise of such discretion in his favour should come

before the judicial authority with clean hands. As already discussed, the approach and attitude of the assessee in the present case is very casual and negligent and the averments made by him in the affidavit are not supported by any documentary evidence. On the contrary, there is material on record which shows that the averments so made are wrong and not at all convincing. I am, therefore, of the view that the assessee has failed to show any sufficient cause for the delay of 557 days in filing this appeal before the Tribunal. In that view of the matter, I treat this appeal as barred by limitation and dismiss the same at the threshold.

3. In the result, the appeal of the assessee is dismissed.

Order Pronounced in the Open Court on 9th November, 2021.

Sd/-
(P.M. JAGTAP)
VICE-PRESIDENT

Dated: 09/11/2021

Biswajit, Sr. PS

Copy of order forwarded to:

1. Bishnu Kumar Agarwal, 132A, Raja Rajendra Lal Mitra Road, 2nd Floor, Flat 2B, Beliaghata, Phool Bagan, Kolkata – 700085.
2. ITO, Ward – 46(1), Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. Private Secretary/DDO
ITAT Kolkata Benches, Kolkata