

आयकर अपीलीय अधिकरण "F" न्यायपीठ मुंबई में

IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
BEFORE SRI MAHAVIR SINGH, VP AND SRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No. 4600/Mum/2019
(निर्धारण वर्ष / Assessment Year 2011-12)

आयकर अपील सं./ ITA No. 4601/Mum/2019
(निर्धारण वर्ष / Assessment Year 2010-11)

Jayesh Panchalal Patel C-205, Ghatkopar Industrial Estate, Behind R City Mall, LBS Marg, Ghatkopar Mumbai-400 086	बनाम/ Vs.	The Income Tax Officer, Ward 27(1)(5) Room No 410, 4 th Floor, Tower No.6, Vashi Railway Station Complex, Vashi, Navi Mumbai-400 703
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AKDPP7337E		

अपीलार्थी की ओर से/ Appellant by	:	Shri Hari Raheja, AR
प्रत्यर्थी की ओर से/ Respondent by	:	Ms. Usha Gaikwad, DR

सुनवाई की तारीख / Date of hearing:	04.08.2021
घोषणा की तारीख / Date of pronouncement:	04.08.2021

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष के द्वारा /

PER MAHAVIR SINGH, VP:

These appeals of assessee are arising out of orders of the Commissioner of Income Tax (Appeals)-25, Mumbai [in short CIT(A)], in Appeal Nos. CIT(A)-25/IT-234 & 232 /2017-18 vide dated 11.04.2019. The Assessments were framed by the Income Tax Officer, Ward-28(1)(5), Mumbai (in short ITO / AO) for the A.Ys.

2010-11 & 2011-12 vide even date 18.03.2016 under section 143(3) read with section 147 of the Income-tax Act, 1961 (hereinafter 'the Act'). The penalties were levied by Income Tax Officer, Ward 27(1)(5), Mumbai for Assessment Year 2009-10 & 2010-11 vide order of even date 28.09.2016 under section 271(1)(c) of the Act.

2. The only issue in these two appeals of assessee is against the orders of CIT(A) in not condoning the delay despite the fact that there is sufficient cause for not filing the appeal within the time. The assessee has raised identically worded grounds except quantum in both the Assessment Year's i.e. Assessment Year 2010-11 & 2011-12, hence, we will take the facts from Assessment Year 2010-11 in ITA No. 4601/Mum/2019 and will decide the issue. For this assessee has raised the following grounds:-

"1. On the facts and circumstances of the case and in law the Ld. Commissioner of Income Tax (Appeals) (referred as CIT(A)) erred in not condoning the delay in filing of the appeal on the ground or grounds as stated in the appellate order or otherwise.

2. On the facts and circumstances of the case and in Law the Ld. Commissioner of Income Tax (Appeals) (referred as CIT(A)) erred in confirming the penalty levied under section 271(1)(c) of Rs.1,26,549/- on the ground or grounds as contained in the appellate order or otherwise."

3. At the outset, it is noticed that the penalty order under section 271(1)(c) of the Act was passed by the Assessing Officer on 28.08.2016 and assessee in form No. 35 i.e. appeal form to be filed before CIT(A), the date of receipt of order is shown as 30.09.2016.

Thereafter, the appeal was filed only on 20.01.2018 and thereby there is a delay of 14 months. The assessee has filed condonation petition before CIT(A) stating the reasons which are mentioned by CIT(A) in Para 5.2. which reads as under:-

"5.2 The assessee has claimed that the delay was occasioned due to the fact that the assessee has met with a major accident on 03.03.2012 and had some medical complication in September, 2013. The assessee claimed that he had fractured his hand in May, 2016 and he had a varicose vein procedure done in August, 2016. It was claimed that due to the above medical regions and ignorance of law, he was unable to file an appeal in time. All this has been stated on affidavit also."

4. The CIT(A) has not accepted the request for condonation of delay of the assessee and main reasoning given by CIT(A) in Para 6.1 for not condoning the delay reads as under: -

"6.1 In view of the various latest decisions of the Supreme Court which reflect a rethinking on the matter, the present appeal of the assessee, which is instituted after a delay of a minimum of 14 months is held to be barred by limitation. It is held that the assessee has no sufficient cause for not presenting the appeal within the prescribed time. The appeal papers are held to have been filed beyond time and they suffer from delays and latches. The delay is not condoned under section 249(3) of the Act and the appeal is not admitted. For statistical purposes the application for the appeal is treated is dismissed."

5. The CIT(A) has discussed various case laws and it is noticed that the CIT(A) after admitting the appeal also discussed the merits

of the case and confirmed the action of the Assessing Officer in levying the penalty under section 271(1)(c) of the Act by dismissing the appeal of the assessee.

6. On the other hand, the learned Sr. DR agreed that at least one opportunity should be given to assessee to file the supporting documents, evidences or affidavits. The assessee should also be allowed the opportunity to produce the accountant for examination before CIT(A).

7. After hearing both the sides and going through the facts as noted above, we are of the view that at least, assessee should given one opportunity to explain the delay either by producing the accountant or by producing any affidavit or any evidences as noted by the CIT(A). Hence, we set aside the order of CIT(A) and remand the matter back to his file for fresh adjudication. Needles to say that the CIT(A) will first adjudicate the issue of condonation and in case, he condones the delay, he will adjudicate the issue on merits.

8. In the Result, the appeal of assessee is allowed for statistical purposes.

Order pronounced in the open court on 04.08.2021.

Sd/-

(मनोज कुमार अग्रवाल / MANOJ KUMAR AGGARWAL)

(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 04.08.2021

सुदीप सरकार ,व .निजी सचिव/ *Sudip Sarkar, Sr.PS*

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(उपाध्यक्ष / VICE PRESIDENT)

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील)/ The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि आयकर ,अपीलीय अधिकरण मुंबई ,/
DR, ITAT, Mumbai
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

त्यापित प्रति //True_ व .निजी सचिवyr /rS. aterceS etaviry /
आयकर अपीलीय अधिकरण ,मुंबई / ITAT, Mumbai