

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं डॉ एम एल मीना, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
Dr. M.L. MEENA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.:2449/CHNY/2018
निर्धारण वर्ष /Assessment Year: 2008 - 2009

Mr. R.R.S Shanmugam,
Prop.M/s. Sri Palani Murugan
Traders,
No.4/14, Karupparayan Koil
Street, Koppapurpur,
Kappalagarai Post,
Pollachi, Coimbatore – 642 120.

PAN : AVHPS 9198 K

(अपीलार्थी/Appellant)

The Income Tax Officer,
Erstwhile Ward – I(2),
Vs. Now Ward – 1,
No.34, Venkatesa Colony,
Pollachi – 642 001.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Mr. Anandd Babunath, FCA
: Mr. P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing : 14.03.2022
घोषणा की तारीख/Date of Pronouncement : 15.03.2022

आदेश /O R D E R

PER BENCH:

This appeal filed by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-II, Coimbatore in I.T.A No.06/10-11; dated 29.06.2012 challenging the estimated addition by adopting a net profit rate of 10% in respect of the assessment year 2008 – 2009.

2. At the outset, the learned Counsel for the Assessee, Mr. Anandd Babunath, FCA submitted that the appeal was filed with a delay of 2180 days. He contended that the delay in filing the appeal before the Hon'ble Income Tax Appellate Tribunal was not willful. For condonation of delay, an Affidavit was filed dated 03.01.2019 which reads as under:

"I. R.R.S. Shanmugam, S/o Sri Srirangam, aged 74 years residing at No.4/14, Karupparayan Koil Street, Koppanurpudur, Kappalangerai, Pollachi - 642 120 solemnly affirm and state as follows:

1. That the Appellant is an individual deriving income from trading of coconuts and copra assessed to Income Tax in the status of individual, by the Income Tax Officer, Ward - I(2), No.112, Alagappa Layout, Pollachi - 642 001 for the Assessment Year 2008 - 2009. The Appellant had preferred an appeal before the Hon'ble ITAT, Chennai Bench as was filed with a delay of 2181 days against the order of the Income Tax Officer, Ward - I(2), Pollachi. The Appeal is delayed by 2181 days.
2. As the Appellant has been suffering from cardiac issues and underwent by-pass surgery at K.G. Hospital, Combatore and since then he is bedridden due to ill health. Hence, he was unable to meet any authorized representatives to proceed further. However, the present authorized representative had been approached since the Appellant had been able to respond well. The appeal is now being preferred, there was a delay of 2181 days. The delay was an involuntary and not intentional, which is the reason for delay in filing the appeal. At present the health condition is

also under critical care with Amirtha Hospital, Coimbatore since October 2018.

3. I submit that the delay in filing the appeal before the Hon'ble Income Tax Appellate Tribunal, Chennai "C" Bench is not willful. I pray that the delay of 2181 days in filing the appeal may kindly be condoned and the appeal be admitted."

3. The learned DR strongly objected to the request of the learned Counsel of the Assessee for the condonation of delay. The learned DR submitted that there was no evidence to substantiate the reasons given by the Assessee for such a long delay of 2181 days in filing the appeal before the Tribunal. He also contended that the Assessee had just undergone a by-pass surgery for the cardiac that the Assessee was suffering and could be a matter of few months, that cannot be extended more than six months or even more than a year in the pretext of the by-pass surgery that the Assessee had undergone.

The learned DR argued that in the present case, there has been a delay of more than six years and under the facts of the case, such an inordinate delay cannot be considered as a bonafide delay on the part of the Assessee. The learned DR prayed that the delay application requires to be rejected.

4. Having heard both the sides on the issue of condonation of delay and after going through the petition and the documents filed by the Assessee i.e. certificate of the Doctor, etc., we observe that admittedly there has been a delay of 2181 days in filing the appeal by the Assessee. The reasons quoted by the Assessee for such a long inordinate delay in filing the appeal before the Hon'ble Tribunal is that the Assessee was suffering from heart disease (cardiac issues) for which the Assessee had undergone a by-pass surgery. We understand that such a by-pass surgery for a patient who is suffering from heart disease takes a maximum period of six months to recover. In the case of the Assessee for the purpose of filing this appeal, he is merely required to sign the appeal memo.

5. The Hon'ble Apex court in the case of Mani Mandir Sewa Nyas Samiti Ramghat Ayodhya Vs. Commissioner of Income Tax reported in [2020] 119 Taxmann.com 383 (SC) dismissed the SLP filed by the Assessee on merits for the condonation of delay. The relevant portion of the judgement of the Hon'ble Supreme Court of India reads as under:

"5. We have considered the rival submission of the parties and perused the record.

It is a fact that Income Tax Appellate Tribunal passed the impugned order on 28-2-2014. The period for filing the appeal was expired on 8-7-2014. The appeal has been preferred on 17-4-2019. The main excuse of delay in filing of appeal is in reference to the Manager, who said to be suffering from many ailments. There is nothing on record to show that Late Padam Prakash Singh was suffering from ailments and was such an ailment which did not permit him to take initiative for filing of appeal. It was otherwise duty of the assessee to watch the affairs of its firm and in any case, Late Padam Prakash Singh died on 22-11-2017. At least thereupon, the assessee was expected to file appeal immediately but it was filed almost after one and half years. The delay in filing the appeal is not of few days or months but is of more than four and half years.

6. Taking note of the aforesaid, we do not find any ground to condone the delay. Accordingly, the application for condonation of delay is dismissed."

6. In our view, the disease was not so chronic that could have stopped the Assessee in signing the Form-36 and thereof. Thus, we do not see any concrete reason for the delay on the part of the Assessee in filing this appeal. We find no merit in the petition of the Assessee, and therefore, the condonation application filed by the Assessee for such a long period of delay, i.e.2181 days without the support of the cogent reasons beyond the control of the Assessee cannot be entertained. Accordingly, the Assessee's application for condonation of delay is hereby rejected.

7. Respectfully, following the decision of the Hon'ble Apex court in the case of Mani Mandir Sewa Nyas Samiti Ramghat Ayodhya Vs. Commissioner of Income Tax (supra), the condonation petition as regards to the delay is rejected and the appeal dismissed, as not maintainable.

8. In the result, the appeal filed by the Assessee is dismissed.

Order pronounced in the open court on 15th March, 2022 at Chennai.

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

Sd/-

(डॉ एम एल मीना)

(Dr. M.L. MEENA)

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 15th March, 2022

IA, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |