

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC-II" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER) AND
SHRI PAVAN KUMAR GADALE (JUDICIAL MEMBER)**

**ITA No. 8039/MUM/2019
Assessment Year: 2014-15**

Mr. Sanjay Ganesh Puranik,
1, Teredesai Building, Near Bank
of Maharashtra, Gokhale Road,
Naupada,
Thane-400602
PAN No. AGRPP 1849 H
Appellant

Vs.

ITO-Ward-3(3),
6th floor, Ashar IT Park, Road
No. 162, Nehru Nagar, Wagle
Ind. Estate,
Thane-400601
Respondent

Assessee by : None
Revenue by : Mr. Brajendra Kumar, DR

Date of Hearing : 01/02/2022
Date of pronouncement : 03/02/2022

ORDER

PER OM PRAKASH KANT, AM

The assessee has preferred this appeal against the order dated 28.02.2018 passed by the Ld. Commissioner of Income Tax (Appeals)-2, Thane [in short 'CIT(A)'] for the assessment year 2014-15, raising following ground :

"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in retaining the addition on agricultural income of ₹23,10,300/- made by the AO."

2. At the outset, we may like to mention that neither anyone appeared on behalf of the assessee nor any adjournment was filed by the assessee, therefore, we decided the application of the assessee for condonation of delay in filing appeal and the appeal *ex-parte qua* the assessee after hearing the arguments of the Ld. Departmental Representative (DR).

3. The Ld. DR pointed out that this appeal has been filed with a delay of 240 days and therefore appeal might not be admitted.

4. On perusal of the application for condonation of delay in filing the appeal and the enclosed affidavit, we find that assessee was prevented by sufficient cause in not filing the appeal on time. In the affidavit, the assessee has mentioned that due to non-cooperation on the part of the authorized representative dealing the case of the assessee, he could not file appeal on time. The relevant para of the affidavit is reproduced for ready reference:

"5. Myself being ignorant and less aware about the income tax laws and procedural formalities had completely relied and trusted my AR for taking necessary actions. Myself, my son and our accountant had repeatedly tried to get in to contact with him for understanding the status of income tax proceedings, for which he had repeatedly given us the response that appeal has been filed and that the release order will be received soon. I learnt about the demands raised when my various bank accounts with Thane Janta Sahakari Bank Ltd and Bank of Maharashtra, at various branches, were attached by the Income Tax Department on October 16th, 2018. However, when we asked for the appeal documents, the same were never given to me This led me to believe that my case was not being handled responsibly and promptly by the AR.

6. *We tried to follow up with the AR and get copies of assessment orders for a long time. On rigorous follow up, we have received the copies of assessment and penalty orders from AR on November, 17th 2019 and have immediately initiated further actions.*

7. *This affidavit is being made in support of my assessment /appeal/recovery proceeding pending in the Income Tax Department and my applications for getting the legitimate relief and condone the delay from the date of order by CIT(A) in filing appeal.”*

5. In the case of **Collector, Land Acquisition, Anantnag & Anr. Vs Mst. Katiji and others (1987) 2 SCC 107**, the Hon'ble Supreme Court has held that the expression 'Sufficient Cause' employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner to subserves the ends of justice that being the life-purpose of the existence of the institution of Courts. It was further held by the Hon'ble Supreme Court that such liberal approach is adopted on one of the principles that refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties. Another principle laid down by the Hon'ble Supreme Court is that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non- deliberate delay. It was also held by the Hon'ble Supreme Court that there is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of male fides.

A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.

5.1 In the instant case, applying the same principles, we find that there is no culpable negligence or *malafide* on the part of the assessee in delayed filing of the present appeal and it does not stand to benefit by resorting to such delay.

5.2 In view of the aforesaid discussion and exercise of powers under section 253(5) of the Act, we hereby condone the delay in filing the present appeal as we are satisfied that there was sufficient cause for not presenting the appeal within the prescribed time and the appeal is hereby admitted for adjudication on merits.

6. The Ld. Sr. DR submitted that the appeal has been decided by the Ld. CIT(A) in ex-parte manner. We also find that despite several notices issued, non-represented on behalf of the assessee and the Ld. CIT(A) has rejected the claim of the assessee following his findings in assessment year 2015-16. We find that Ld. CIT(A) had issued three notices within a period of three months from 8th December 2017 to 22nd February, 2018 but there was no compliance of said notices, thereafter, he immediately passed the order. In our opinion, in the interest of substantial justice, the issue in dispute must be adjudicated after hearing the assessee and therefore, the assessee should be provided one more opportunity by the Ld. CIT(A) and pass the order after taking into consideration, the evidences and arguments of the assessee for adjudicating the issue of disallowance of agricultural income of ₹29,15,000/-. Accordingly, we set aside by the order of the Ld. CIT(A) on the issue in dispute and restore the matter back to him for deciding afresh after providing adequate opportunity of

being heard. If the opportunity provided is not availed by the assessee, the Ld. CIT(A) is at liberty to decide the issue on merit after taking into consideration evidences available on record. The grounds raised by the assessee are accordingly allowed for statistical purposes.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 03/02/2022.

**Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;

Dated: 03/02/2022

Rahul Sharma, Sr. P.S.

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,

(Sr. Private Secretary)
ITAT, Mumbai