

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

SHRI PRAMOD KUMAR, VICE PRESIDENT
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 1486/MUM/2020
(ASSESSMENT YEAR: 2010-11)

A.B. Negi Reddy,
B/202, Prinyanka C.H.S. Colony,
Mulund (East),
Mumbai - 400081
[PAN: ADOPR7451D]

..... Appellant

Vs

Assistant Commissioner of Income
Tax, Circle-2, Mumbai,
6th Floor, Ashar IT Income Tax Office,
Wagle Estate, Thane (West),
Thane - 400604

..... Respondent

Appearances

For the Appellant/ Assessee : Shri Prakash Jhunjunwala
For the : Shri Mehul Jain
Respondent/Department

Date of conclusion of hearing : 09.03.2022
Date of pronouncement of order : 08.06.2022

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant/Assessee has challenged the order, dated 21.03.2016, passed by the Learned Commissioner of Income Tax (Appeals)-11, Pune [hereinafter referred to as 'the CIT(A)'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'] in appeal [Pn/CIT(A)-11/ACIT Cen. Cir 2, Thane/513/204-15] for the Assessment Year 2010-11, whereby the Ld. CIT(A) had dismissed the appeal filed by the Assessee against the

Assessment Order, dated 25.03.2013, passed under section 143(3) of the Act.

2. The Ld. Authorised Representative for the Appellant appearing before us, at the outset, submitted that there was a delay in filing the appeal, and therefore, the Appellant has filed affidavit, dated 28.01.2022, explaining the delay of 805 days in filing the appeal. He submitted that the copy of the order passed by the CIT(A) was not served on the Appellant as the Appellant had shifted his residence to Kurnool, Andhra Pradesh after suffering huge business loss. In the year 2013, the Sales Tax Department, Maharashtra had conducted search action against the Appellant. The books of accounts and documents of the Appellant were seized and the Appellant was burdened with huge tax demand by the Sales Tax/VAT Department. The bank accounts and properties of the Appellant were attached. Since the Appellant was extremely disturbed, he could not pursue the appeal before CIT(A). Thereafter, the Appellant was also declared as a defaulter by Bank of Maharashtra and the properties of the Appellant were attached and put up for auction. In the meanwhile, the tax consultant of the Appellant suffered a heart attack and had to undergo heart coronary and bypass surgery. Therefore, when the order passed by the CIT(A) was served upon the tax consultant on 25.10.2017 he was not keeping good health and could not inform the Appellant or advise the Appellant to pursue the appeal. Referring to the medical records of the tax consultant placed on record, the Ld. Authorised Representative for the Appellant submitted that the tax consultant has been hospitalized on a number of occasions since then. He further submitted that the

Appellant has been facing difficult times since 2013 and therefore, he has neither been able to pursue the appeal before CIT(A) nor was able to file the appeal against the order passed by CIT(A). He further submitted that an application for admission of additional evidence has also been filed under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963 to place on record additional evidence as the Appellant was, in the above circumstances which were beyond his control, prevented from gathering and filing the same before CIT(A). Ld. Authorised Representative for the Appellant prayed that the delay in filing the appeal be condoned. He also prayed that the additional evidence filed by the Appellant be taken on record or in alternate, the matter be remanded back to the file of CIT(A) for adjudication of the appeal after taking into consideration the additional evidence filed by the Appellant.

3. Per contra, the Ld. Departmental Representative submitted that there has been substantial delay in filing the appeal and therefore the same should not be condoned. He submitted that the appeal has been filed after a delay of 805 days and that the Appellant has failed to provide sufficient cause for not filing the appeal in time.
4. We have heard the rival submissions and perused the material on record including the orders passed by the lower authorities and the documents filed along with affidavit explaining reasons for delay. The assessment was framed on the Appellant vide order, dated 25.03.2013 and the appeal against the same was filed before CIT(A) on 10.04.2013 through Mr. R. Jaju, Advocate (hereinafter referred to as 'the Tax Consultant'). According to

the Appellant a search action was conducted by the Sales Tax Department in the year 2013 who was engaged in the business of civil construction at the relevant time. In this regard, the Appellant has placed on record a copy of letter, dated 02.01.2019, written by the Appellant to Assistant Commissioner of Sales Tax, Palghar Division. The Appellant had incurred business losses and defaulted in repayment of loans and was, therefore, facing the pressure of recoveries. In these circumstances, the Appellant shifted his residence to Kurnool, Andhra Pradesh during the pendency of the appeal before CIT(A). When the appeal filed by the Appellant before CIT(A) was decided vide order, dated 21.03.2016, the order could not be served upon the Appellant since the Appellant had shifted his residence. The order, dated 21.03.2016, passed by CIT(A) was served upon the Tax Consultant of the Appellant, on 25.10.2017. At the relevant time the Tax Consultant of the Appellant was suffering from heart ailment. The Appellant has placed on medical records of the Tax Consultant which show that the relevant time the Tax Consultant was around 60 years of age and was being treated for heart ailment. He was suffering from Tachycardia and was required to undergo Coronary artery bypass graft surgery (CABG). The medical reports also show that the Tax Consultant has been admitted to hospital on a number of occasions since 15.07.2017. Copy of recovering notices, dated 05.02.2018, issued by Bank of Maharashtra support the submission of the Appellant that the Appellant was facing financial difficulties and was traversing through difficult times facing pressure to make payments towards outstanding liabilities and demands. The properties and bank account of the Appellant were also

attached. In the aforesaid facts and circumstances, it cannot be said that there was gross negligence or deliberate inaction or lack of bona fides, on the part of the Appellant. In our view, the Appellant did not stand to gain by resorting to delaying tactics. It is settled legal position that expression "sufficient cause" should receive a liberal construction so as to advance substantial justice. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold. 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. Sometimes delay of the shortest range may be un-condonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. [Collector, Land Acquisition, Anantnag and Ors. vs. Katiji: AIR 1987 SC 1353 and Ors and N. Balakrishnan vs M. Krishnamurthy: (1998) 7 SCC 123]

5. In our view the Appellant has been able to explain the delay of 805 days in filing the appeal. Therefore, in the factual matrix of the present case, we find that there exists sufficient and reasonable cause for condoning the delay in filing the present appeal. Accordingly, in exercise of powers under section 253(5) of the Act, we hereby condone the delay in filing the present appeal. Further, having considered the facts and circumstances of the case we are of the view that the Appellant was not able to pursue his appeal before CIT(A) effectively as the Appellant was not able to file relevant documents before the CIT(A) which are now sought to be filed as additional evidence under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963. We are

inclined to grant an opportunity to the Appellant to present his case before CIT(A). Accordingly, we remand the matter to the file of CIT(A) with the directions to decide the appeal afresh after granting the Appellant reasonable opportunity of being heard, and after taking into account additional evidence filed by the Appellant before the Tribunal.

6. In terms of paragraph 5 above, the present appeal stands disposed off.
7. In the result, appeal is allowed for statistical purposes.

Order pronounced on 08.06.2022.

Sd/-
(Prmod Kumar)
Vice President

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 08.06.2022
Alindra, PS

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.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार //(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai