

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH: KOLKATA
[Before Shri Sanjay Garg, Judicial Member & Shri Rajesh Kumar, Accountant Member]

I.T.A. No. 217/Kol/2022
Assessment Year : 2010-11

Dr. Sukanta Ghosal (PAN: AIQPG 2838 Q)	Vs.	ITO, Ward-22(1), Kolkata
Appellant		Respondent

Date of Hearing	15.06.2022
Date of Pronouncement	13.07.2022
For the Appellant	Shri S.K. Tulsiyan, Advocate Puja Somani
For the Respondent	Shri Nicholas Murmu, Addl. CIT

ORDER

Per Shri Rajesh Kumar, AM:

This is the appeal preferred by the assessee against the order of the Commissioner of Income Tax(Appeals)-6, Kolkata [hereinafter referred to as ‘Ld. CIT(A)’] dated 25.03.2019 for the assessment year 2010-11.

2. At the outset, we notice that there is delay of 1066 days in filing the appeal and accordingly the Id AR was asked to explain the same. The Ld. A.R. submitted before us that the delay of 1066 days in filing the appeal is for bonafide reasons and for a reasonable cause. The Ld. A.R. submitted that the assessment order was passed u/s 143(3) read with Section 147 of the Income Tax Act, 1961 (hereinafter referred to as the Act) on 29.03.2016 which was served on the assessee on 31.03.2016. the Id AR further submitted that appeal against the said assessment order was filed manually before the Ld. CIT(A) on 22.04.2016 which was well within the prescribed due time under the Act however the Ld. CIT(A) without providing any opportunity to the assessee dismissed the appeal as non-maintainable by ex-parte order dated 25.03.2019 by holding that the appeal is barred by limitation within the meaning of

Section 249(2) of the Act. Thereafter the assessee filed a rectification petition u/s 154 of the Act dated 01.05.2019 before the Ld. CIT(A) explaining that Rule 45 of the Income Tax Rules, 1962 as substituted by the I.T. (Third Amendment) Rules, 2016 w.e.f. 01.03.2016 which has mandated compulsory e-filing of appeal before the Ld. CIT(A) and requesting to recall the order dated 25.03.2019. The Id Counsel submitted that the time limit for e-filing of appeal was extended by CBDT Circular No. 20/2016 dated 26.05.2016 upto 15.06.2016 which were due to be filed by 15.05.2016. The assessee filed this appeal electronically on 8.6.2016 and therefore the appeal of the assessee is not barred by limitation u/s 249(2) of the Act. The Id counsel of the submitted that no action was taken by the Ld. CIT(A) on the said rectification application which is still pending. In the mean time, the assessee received penalty notice from NaFAC. The assessee lodged a complaint before CBDT (I.T) through CPGRAM on 04.02.2022 stating the said facts and attaching all the documents therewith. Vide communication dated 30.03.2022, the grievance of the assessee was disposed by simply intimating the assessee that the contents of the CPGRAM has been forwarded to the concerned FPO and suggested the assessee to make representation before the concerned AO in the on-going penalty proceedings which has nothing to do with the main grievance of the assessee. Thereafter the assessee filed a reminder letter on 4.4.2022 before the Ld. CIT(A) however nothing has been heard till date. In the mean time, the assessee was advised by the Senior Counsel to file an appeal before the Tribunal against the order of Ld. CIT(A) and accordingly acting upon the said advice, the assessee filed the appeal on 29.04.2022 with a delay of 1066 days from the prescribed due date. The Ld. Counsel submitted that the said delay is neither intentional nor for any extraneous reason but for a bonafide and reasonable cause. The Id. Counsel submitted that the delay in filing the appeal is not intentional but due to the reasons and circumstances as narrated above which are bonafide and beyond the control of assessee as assessee had not foreseen inactions on the part of various authorities. The Ld. A.R. submitted that the condonation petition of the assessee may be considered leniently and sympathetically as the delay is not attributable to the assessee at all and delay in filing the present

appeal may be condoned. The Id Counsel in defense of his arguments relied upon the decision of the Hon'ble Apex Court in the case of Collector, Land Acquisition Vs Mst.Katiji & Others (167 ITR 47) SC. The Id Counsel further submitted that since the appeal has not been decided on merits, the same may be restored to the file of the Id. CIT(A) with the direction to decide the same on merits. The Id DR relied on the other hand relied on the order of Id. CIT(A) and left the issue to the wisdom of the bench.

3. After hearing the rival parties and perusing the material on record, we note that the Ld. CIT(A) has dismissed the appeal on the ground of being barred by limitation in limine without discussing the merits of the case whereas as matter of fact the appeal of the assessee was not barred by limitation. We observe that the first appellate authority has not appreciated the facts correctly and proceeded to dismiss the appeal ex-parte on the ground of appeal being time barred which was not barred by limitation. We also observe that the rectification application moved by the assessee for recalling the appellate order on the ground of appeal not being barred by limitation in terms of CBDT Circular No. 20/2016 dated 26.05.2016 extending the date of filing the appeal upto 15.06.2016 which were due to be filed by 15.05.2016. Still the rectification petition of the assessee has not been disposed of. The assessee has preferred an appeal before the tribunal against the order of Id CIT(A) which is admittedly late by 1066 days from the due date. The assessee has explained the delay in filing the appeal before the tribunal with reasons which are bonafide and reasonable. In view of these facts, we are inclined to condone the delay of 1066 days in filing the appeal which would be in consonance with the ratio laid down by the Hon'ble Supreme Court in the case of Collector, Land Acquisition Vs Mst.Katiji & Others wherein the Hon'ble Court has held that the courts should have pragmatic and liberal approach while considering the condonation petition and further held that where the substantial justice and technical consideration are pitted against each other, the cause of substantial justice should be preferred. Further since the appeal has not been decided on merits, we find merit in the contentions of the assessee's counsel for

restoration of the same to the file of Id CIT(A). Therefore , in the interest of justice and respectfully following the ratio as laid down by the Apex Court ,the appeal of the assessee is restored to the file of the Id CIT(A) with the direction to decide the appeal on merits after affording a reasonable opportunity to the assessee

4. In the result, the appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 13th July, 2022

Sd/-

(Sanjay Garg)
Judicial Member

Sd/-

(Rajesh Kumar)
Accountant Member

Dated: 13th July, 2022

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Dr. Sukanta Ghosal, 8, Ashokegarh East, Flat No. 2, Baranagar, Kolkata-700108
2. Respondent – ITO, Ward- 22(1), Kolkata
3. The CIT(A)- 6, Kolkata (Sent Through E-mail)
4. Pr. CIT- Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata