

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 8568/DEL/2019
[Assessment Year: 2010-11]

Jitender Kumar, H.No. 221A, Vill. Samaspur Khalsa, New Delhi-110073 PAN- AQYPK3805D	<u>Vs</u>	Income-tax Officer, Ward-62(2), New Delhi
APPELLANT		RESPONDENT
Appellant by		Sh. Suraj Bhan Nain, Adv.
Respondent by		Sh. Om Prakash, Sr. DR
Date of hearing		05.07.2022
Date of pronouncement		19.07.2022

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-20, New Delhi, dated 26.08.2019, pertaining to the assessment year 2010-11. The assessee has raised following grounds of appeal:

“1. On the facts & circumstances of the case and in law, the Ld. Commissioner of Income-tax (Appeals) erred in not condoning the delay in filing appeal as there was sufficient cause for not filing the appeal within specified period by the assessee because the delay was on the part of counsel of the assessee.

2. On the facts & circumstances of the case and in law, the Ld. Assessing Officer erred in initiating assessment proceedings under section

147 of the Income Tax Act, 1961 and completing the assessment under section 144 r. w. s. 147 of the Income Tax Act, being not in accordance with the requirements of provisions of sections 147 to 151 of the Income Tax Act, 1961.

3. On the facts & circumstances of the case and in law, the Ld. Assessing Officer erred in making an addition of Rs. 31,83,278/- on account of estimating income at the rate of 10% of share trading turnover whereas the assessee had incurred loss of Rs. 98,706/- in intra-day trading which was shown as speculation loss to be carried-forward in the return of income furnished under section 139(1) on 31st July 2010.

4. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”

2. Facts giving rise to the present appeal are that the assessment of the assessee was reopened u/s 147 of the Income-tax Act, 1961 (in short “the Act”), on the basis that as per ITS it was found that there was trading turnover amounting to Rs. 3,18,82,782/-. No one attended the proceedings before the assessing authority. Therefore, the Assessing Officer computed the income at Rs. 31,83,278/- @ 10% of the turnover. Aggrieved against it the assessee preferred appeal before the learned CIT(Appeals), who dismissed the appeal on the basis that the appeal filed was delayed by 293 days. Now the assessee is in appeal before this Tribunal.

3. Learned counsel for the assessee submitted that the learned CIT(Appeals) failed to appreciate the facts in right perspective. The assessee was not provided opportunity to represent his case and there was reasonable cause for not filing the

appeal within the time prescribed under the law. He submitted that before the learned CIT(Appeals) it was urged that the delay in filing the appeal be condoned as the delay was caused due to the non-filing of the appeal by the authorized representative. Learned counsel drew my attention towards affidavit filed by the assessee, wherein it has been stated that he had handed over the relevant documents to authorized representative Shri Om Prakash Prajapati, prop. M/s Om Associates for filing the appeal. However, the appeal was filed on 4.9.2018 which was to be filed by 25.1.2018. A copy of power of attorney dated 29.12.2017 is also placed on record.

4. Learned Sr. DR opposed the submissions and submitted that the assessee had been thoroughly negligent even before the Assessing Officer.

5. In rejoinder learned counsel for the assessee submitted that there was a reasonable cause in not filing the appeal within prescribed limit and placed reliance on the judgment of the Hon'ble Karnataka High Court rendered in the case of Mrs. Premalatha Pagaria v. ITO [2021] 130 taxmann.com 403 (Kar.); decision of the coordinate Bench of the ITAT in the case of Bharat Vikas Udyog v. ITO (ITA no. 2079/Del/1986 – AY 1980-81); and the judgment of the Hon'ble Supreme Court in the case of Collector, Land Acquisition Vs. Mst. Katiji & others [1987] 167 ITR 471 (SC).

6. I have heard the rival submissions and perused the material available on record. The contention of the assessee is that the delay in filing the appeal before the learned CIT(Appeals) was caused due to negligence of the authorized representative, who did not file the appeal with the prescribed time. The assessee was not aware about the period of limitation, since he was not conversant with the law of limitation.

7. The Hon'ble Karnataka High Court in the case of Mrs. Premalatha Pagaria v. ITO (supra), inter alia, has observed as under:

“8. The well settled legal principles that the expression 'sufficient cause' should receive liberal consideration so as to advance the cause of justice may be taken note of for the purpose of reference:

"The words "sufficient cause", as appearing in Section 5 of Limitation Act, should receive a liberal construction when the delay is not on account of any dilatory tactics, want of *bona fides*, deliberate inaction or negligence on the part of the applicant/appellant, in order to advance substantial justice. The words "sufficient cause for not making the application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case.

The decisive factor in condonation of delay is not the length of delay but sufficiency of a satisfactory explanation.

The degree of leniency to be shown by a court depends on the nature of application and facts and circumstances of the case. [See: '*Perumon Bhagavathy Devswom v. Bhargavi Amma (Dead)* by LRS 2008 (8) SCC 321, '*Katari Suryanarayana v. Kpoisetti Subba Rao and Ors* AIR 2009 SC 2907, '*Assistant Commissioner (CT) LTU, Kakinada & Ors. v. M/s Glaxo Smith Kline Consumer Health Care Limited*', 2020 T361 G.S.T.L. 3051"

9. In the backdrop of the well settled legal principles, the facts of the case on hand may be examined.
10. The reasons assigned by the assessee for the delay in filing the appeal is that the impugned order dated passed by the Commissioner of Income-tax (Appeals) was delivered to the assessee some time in the September 2015 and immediately after receipt of the said order, the assessee had supplied the order passed by the Commissioner of Income-tax (Appeals) to the office of the Auditor so far as to take action for filing of an appeal. It is the case of the assessee that the aforesaid order was not brought to the notice of the Chartered Accountant namely Rajendra Kamavat by his staff, and the same remained in his office files without any action. The appellant thereupon made an enquiry and learnt about the fact on 7-10-2016 that the appeal has not been filed and the appellant took action to contact another Chartered Accountant and filed the appeal thereon.
11. The appellant in the facts and circumstances of the case should not suffer on account of inadvertence on the part of her Chartered Accountant.
12. Thus, in the facts and circumstances of the case, the assessee has made out sufficient cause to condone the delay of 310 days in filing the appeal before the Tribunal.
13. The aforementioned substantial questions of law framed by this Court is answered in favour of the assessee.
14. In the result, order dated 23-2-2017 passed by the Tribunal is hereby quashed and delay in filing the appeal is condoned.
16. The matter is remitted to the Tribunal for decision afresh in accordance with law.”
8. In the present case also, it is the contention of the assessee that he had handed over the impugned order to the authorized representative, which is evident from the copy of power of attorney dated 29.12.2017, placed on record. Therefore, respectfully following the decision of the Hon’ble Karnataka High Court in the case of Mrs. Premalatha Pagaria v. ITO (supra), I hereby condone the delay in filing appeal before the learned CIT(Appeals) and restore the grounds of appeal to

the file of the learned CIT(Appeals) to decide the same on merits in accordance with law.

9. In the result, assessee's appeal stands allowed for statistical purposes.

Order pronounced in open court on 19th July, 2022.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI