

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'SMC', LUCKNOW**

BEFORE SHRI T. S. KAPOOR, ACCOUNTANT MEMBER

ITA No.157/Lkw/2020
Assessment Year:2012-13

Income Tax Officer-3(3), Kanpur.	Vs.	Smt. Pushplata Soni, 12/36/136, Gwal Toli, Kanpur. PAN:AYDPS7664M
(Appellant)		(Respondent)

Appellant by	None
Respondent by	Shri Harish Gidwani, D.R.
Date of hearing	28/07/2022
Date of pronouncement	29/07/2022

ORDER

This appeal has been filed by the Revenue against the order of the Ld. CIT(A), dated 27/11/2018 pertaining to assessment year 2012-13.

2. There is a delay of 376 days in filing of this appeal. The Revenue has filed an application, dated 19/02/2020 for condonation of delay. For the sake of ready reference, the application dated 19/02/2020 is reproduced as below:

"Sub.: Request for Condonation of delay in filing of appeal in the case of Smt. Pushplata Soni, 12/36/136, Gwal Toli, Kanpur (PAN:AYDPS7664M) for AY 2012-13, Reg.

Kindly refer to the above.

In this connection, it is submitted that the order of Ld. Commissioner of Income Tax (Appeals)-1, Kanpur in the case of Smt. Pushplata Soni for A.Y. 2012-13 has been received in the O/o the Pr. Commissioner of Income Tax-I, Kanpur on 11.12.2018 and therefore, the last date of filing of Departmental appeal before the Hon'ble ITAT was on 09.02.2019. The tax effect in the case is Rs.8,39,461/- and therefore, the learned Pr. CIT has not recommended the proposal for filing of appeal before the Hon'ble ITAT, Lucknow on the ground that the tax effect involved in the case is below the monetary limit prescribed by the Hon'ble CBDT, New Delhi vide instruction no. 03/2018 dated 11.07.2018.

Later on, the CBDT, New Delhi vide circular no. 23 of 2019 dated 06.09.2019 and O.M. dated 16.09.2019 has decided that notwithstanding anything contained in any circular issued u/s 268A specifying monetary limits for filing of departmental appeals before Income Tax Appellate Tribunal (ITAT), High Courts and SLPs/'Appeals before the Hon'ble Supreme Court, appeal may be filed on merits as an exception to said circular, where Board, by way, of special order direct filing appeal on merit in cases involved in organized tax evasion activity. In the O.M. dated 16.09.2019 the following instruction has been given:

"The undersigned is directed to refer to Circular No. 23 of 2019 dated 6th September, 2019 and to say that by virtue of powers of the Central Board of Direct Taxes u/s 268A of Income Tax Act, 1961, the monetary limits fixed for filing appeals before ITAT/ HC and SLPs/ appeals before Supreme Court shall not apply in case of assessee claiming bogus LTCG/STCL through penny stocks and appeals! SLPs in such cases shall be filed on merits."

In this case, the prime issue is the sale of shares of a company which was later on established as a penny Stock company by the Investigation Wing, Kolkata and also, as per the observation of the assessing officer in the assessment order, the sale of shares was found to be not a natural phenomenon but an arrangement of dubious design of providing accommodation entry of Long Term Capital Gain to introduce unaccounted own money as exempt income in the form of LTCG on sale of shares. Therefore, the matter falls under the purview of above circular.

In view of the above, the delay caused in filing of appeal within the limitation period i.e. 09.02.2019, was beyond control of the undersigned. It is therefore requested to kindly condone the delay in filing of the appeal."

3. In view of the above facts, we condoned the delay and admitted this appeal for hearing.

4. None was present on behalf of the assessee. Learned D. R. has filed a copy of form No. 5 dated 03/06/2022 under the Vivad Se Vishwas Scheme. This form states that assessee has paid the necessary taxes and has made full and final settlement of the tax arrears under section 5(2) read with section 6 of the DTVSVA, 2020, for Assessment Year 2012-13. It was contended that since the assessee has opted for Vivad Se Vishwas Scheme and tax payable on the Departmental appeal has been deposited and order for final settlement of tax arrears has been passed by the designated authority, therefore, the appeal filed by the Department may be dismissed as withdrawn. Accordingly, since order has been passed by the PCIT-1, Kanpur for full and final settlement of tax arrears under section 5(2) read with section 6 of the DTVSVA, 2020, for Assessment Year 2012-13, the appeal of the Department is ordered to be dismissed as withdrawn.

5. In the result, the appeal of the Revenue stands dismissed.

(Order pronounced in the open court on 29/07/2022)

Sd/.
(T. S. KAPOOR)
Accountant Member

Dated:29/07/2022

*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow