

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T. A. No. 171/Asr/2022
Assessment Year: 2011-12

Smt. Rajinder Kaur
W/o Sh. Ravinder Singh,
Vill. Dhamian Khurd,
PO Sirhala Mundian,
Hoshiarpur (Punjab)

[PAN: BAJPK 5740B]

(Appellant)

V. Income Tax Officer,
Ward Dasuya, Dasuya

(Respondent)

Appellant by : Sh. Surinder Mahajan, CA
Respondent by : Sh. S. R. Kaushik, CIT-DR

Date of Hearing : 02.03.2023
Date of Pronouncement : 22.03.2023

ORDER

Per Dr. M. L. Meena, AM:

The present appeal has been filed by the assessee against the order of the Ld. Pr. Commissioner of Income Tax, Jalandhar-1, dated 28.03.2021 in respect of Assessment Year 2011-12.

2. The assessee has raised the following grounds of appeal:

- “1. That on the facts and circumstances of the case, Learned Pr. Commissioner of Income Tax, Jalandhar-1 ('Ld. CIT') has grossly erred in law in passing order u/s 263 of the Act even though the assessment order u/s 143(3) r.w.s 147 of the Act dated 10.12.2018 passed by the Assessing Officer was neither erroneous nor prejudicial to interest of revenue.
2. That on the facts and circumstances of the case, Learned Pr. Commissioner of Income Tax, Jalandhar-1 ('Ld. CIT') has grossly erred in law in passing order u/s 263 of the Act, when the assessment has already been concluded by the Assessing Officer u/s 143(3) r.w.s 147 of the Act after seeking explanations and making all the enquiries necessary for completion of assessment reopened u/s 148 of the Act for specific issue of cash deposit of Rs. 1,05,75,000/- in Punjab Gramin Bank, Manakdheri and Punjab National Bank, Muradpur.
3. That on the facts and circumstances of the case, proceedings initiated u/s 263 of the Act on the basis of audit objection and consequent order passed u/s 263 of the Act is opposed to judgment of Honorable Punjab and Haryana High Court in the case of COMMISSIONER OF INCOME TAX vs. SOHANA WOOLLEN MILLS HIGH COURT OF PUNJAB AND HARYANA (2008) 296 ITR 0238 wherein it has been held that mere audit objection, and merely because a different view can be taken are not enough to hold that the order of the AO is erroneous or prejudicial to the interest of the Revenue.
4. That on the facts & circumstances of the case, the Id. Commissioner of Income Tax, Jalandhar-1 ('Ld. CIT') has grossly erred in setting aside the assessment framed with the directions to pass fresh order after making necessary enquiries/investigations. Non issuance of specific directions for assessment to be framed clearly proves that it is a case of only change of opinion and the assessment framed is neither erroneous nor prejudicial to the interest of the revenue.
5. That on the facts & circumstances of the case, proceedings initiated u/s 263 of the Act and consequent order passed u/s 263 of the Act is illegal

and bad in law since original order passed u/s 143(3) r.w.s. 147 of the Act is without assumption of valid jurisdiction because:

- (a) *Proceedings u/s 148 of the Act have been initiated by Income Tax Officer, Hoshiarpur whereas Income Tax Officer, Dasuya who completed the assessment had jurisdiction over assessee*
- (b) *Notice u/s 148 of the Act has been sent to assessee on 31.03.2018 through speed post and has been served on assessee after 31.03.2018.*
- 6. *That the order of the Learned Commissioner of Income Tax, Jalandhar-I ('Ld. CIT') u/s 263 is arbitrary, unjust, is based on assumptions & presumptions since no error existed or prejudice was caused to revenue, therefore, the order of the Learned Commissioner of Income Tax, Jalandhar-I ('Ld. CIT') passed u/s 263 of the Act deserves to be quashed.*
- 7. *That on the facts & circumstances of the case, proceedings initiated u/s 263 of the Act by invoking provisions contained in clause (a) of explanation 2 below sub section 1 of section 263 of the Act is illegal and bad in law since provisions contained in clause (a) of explanation 2 below sub section of section 263 of the Act were introduced by Finance Act 2015 and are not applicable to A.Y. 2011-12.*
- 8. *That the Appellant requests for leave to add or amend the grounds of appeal before the appeal is heard or disposed off."*

3. In the present case, appeal against order u/s 263 of the Act was required to be filed on or before. 02.06.2021 but it is being sent through speed post on 20.08.2022. Thus, there was a delay of 448 days in filing the appeal before the Tribunal. The Ld. Counsel explain that the delay was caused due to wrong advice of the CA that appeal would be filed after passing the assessment order in compliance to 263 order of the PCIT. The

Ld. AR filed a written application for condonation of delay with the support of affidavit of the appellant assessee, as under:

- “1. That applicant has filed appeal against order u/s 263 of the Act dated 28.03.2021 passed by Principal Commissioner of Income Tax-1, Jalandhar received by assessee on 01.04.2021.
2. That appeal against order u/s 263 of the Act was required to be filed on or before 02.06.2021 but is being sent through speed post on 20.08.2022 which is expected to be received in ITAT office on or before resulting in delay of 448 days.
3. That assessee is residing in a village Dhamian Khurd PO Sirhala Mundian Hoshiarpur alongwith her minor school going son and no other member of the family is residing with the assessee. Husband of assessee is settled abroad. Assessee has studied upto 8th standard only. Assessee has no source of income except agriculture income. During the year under consideration, husband of assessee sold agriculture land and proceeds received cash were deposited in the joint saving bank of assessee jointly maintained with her husband.
4. That proceedings u/s 148 of the Act were initiated by Income Tax Officer, Hoshiarpur and assessee contacted nearby Chartered Accountant Sachin Puri having office in village Tanda. Sachin Puri obtained desired information and assessment proceedings were concluded by Income Tax Officer Dasuya.
5. That proceedings u/s 263 of the Act were initiated by Pr. CIT-I, Jalandhar and were attended by Sachin Puri. Order u/s 263 of the Act was received wherein Ld. Pr. CIT-I, Jalandhar has directed **“Therefore, the said order passed is set aside to this extent to the file of the Assessing Officer to pass a fresh order after making necessary enquiries/investigations in the light of the discussions made above and after giving due opportunity to the assessee of being heard.”** Sh. Sachin Puri CA on receipt of order u/s 263 of the Act guided that appeal will be filed when Assessing Officer complete that assessment.

6. *That assessee, after receipt of order u/s 263 of the Act never received any notice/order from Income Tax Office except notice u/s 271(1)(c) of the Act dated 10.08.2022 sent through speed post fixing the penalty proceedings for 18.08.2022. Assessee on receipt of penalty notice u/s 271(1)(c) of the Act dated 10.08.2022 contacted Surinder Mahajan and Associates Chartered Accountants, Jalandhar. Surinder Mahajan and Associates checked e-portal and informed assessee that penalty proceedings u/s 271 (1)(c) of the Act have been initiated since assessment order u/s 144 r.w.s. 263 of the Act has been made by National Faceless Assessment Centre, Delhi (NFAC) vide order dated 28.03.2022.*

Assessee was further informed that appeal against assessment order is required to be filed and assessee is also entitled to question the order passed by Revisional Authority also on the ground that power of revision u/s 263 of the Act ought not to have been invoked in the facts and circumstances of the case and contend before the Tribunal that order passed by the Assessing Officer cannot be said to be erroneous as well as prejudicial to interest of revenue.

On being advised assessee has filed appeal before Honorable ITAT Amritsar Bench, Amritsar on 20.08.2022 which is expected to be received in ITAT office on or before 23.08.2022 resulting in delay of 448 days.

7. *That the delay in filing the appeal before Honorable Bench is neither intentional nor will full but due to the good and sufficient reasons shown herein above. Interest of justice demands that the present application is allowed and the delay in filing appeal be condoned so that the matter can be adjudicated upon on its merits.*
8. *That affidavit to this effect is enclosed herewith.*
9. *That it is, therefore, most respectfully prayed that this application may kindly be allowed and the delay of 448 days in filing the appeal before Honorable Bench may kindly be condoned and the matter may kindly be heard on its merit in the interest of justice."*

3.1 The relevant para 5, of the Affidavit of Smt. Rajinder Kaur w/o Sh.

Ravinder Singh dated 20th Aug., 2022 reads as under:

“5. That proceedings u/s 263 of the Act were initiated by Pr. CIT-1, Jalandhar and were attended by Sachin Puri. Order u/s 263 of the Act was received wherein Ld. Pr. CIT-1, Jalandhar has directed “Therefore, the said order passed is set aside to this extent to the file of the Assessing Officer to pass a fresh order after making necessary enquiries/investigations in the light of the discussions made above and after giving due opportunity to the assessee of being heard.” Sh. Sachin Puri CA on receipt of order u/s 263 of the Act guided that appeal will be filed when Assessing Officer complete that assessment.”

3.2 The Ld. AR placed reliance on the Hon'ble Andhra Pradesh High Court vide para 10, 26 and 27 from pg. 3 and 13 is as under:

“10. That under similar circumstances, Honorable High Court of Andhra Pradesh and Telangana condoned delay of 154 days in the case of THUNUGUNTLA JAGAN MOHAN RAO vs. DEPUTY COMMISSIONER OF INCOME TAX 427 ITR 0204 in filing appeal against order u/s 263 of the Act with following observations in para 24.

The Revisional Authority had remitted the matter back to the Assessing Officer to redo the exercise of assessment and the appellant could very well be under the impression that the consequential order of the Assessing Officer only required to be challenged and not the order of the Revisional Authority.

While condoning the delay Honorable High Court has applied the principles laid down by the Honorable Supreme Court in the case of N. Balakrishnan Vs. Krishnamurthy (1988) 7 SCC 123, by observing as under:

“26. The Supreme Court in **N. Balakrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123** has held that the primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice; and that rules of limitation are not meant to destroy the right of parties, but they are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly.

It held that there is no presumption that delay in approaching the Court is always deliberate, and the words 'sufficient cause' under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice.

It held that in every case of delay there can be some lapse on the part of the litigant concerned, but that alone is not enough to turn down his plea and to shut the door against him; and if the explanation does not smack of *mala fides* or it is not put forth as part of a dilatory strategy, the Court must show utmost consideration to the suitor. It also observed that if the delay is deliberate, then the Court should not accept the explanation. It held that while condoning the delay, the Court should compensate the opposite party with costs.

27. Applying the principles laid down in the above case to the instant case, we are of the opinion that, in the facts and circumstances of the case, the explanation for the delay offered by the appellant cannot be said to smack of *mala fides* or that it was put forth as a part of a dilatory strategy, and therefore, the Tribunal ought to have condoned the delay of said period of 154 days in filing the I.T.A. and taken up the matter on merits.”

3.3 He further relies on the order of Hon’ble Apex Court vide pg. 5 is as under:

“(d) That further, in the case of Collector, Land Acquisition & Anr. vs. Mst. Katiji & Ors. (1987) 62 CTR (SC) (Syn) 23 : 1987 (28) ELT 185 (SC), the Supreme Court held that “the legislature has conferred the power to condone delay by enacting s. 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on merits. The expression “sufficient cause” employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Court”.

The Hon'ble Supreme Court further observed that rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics, but seek the remedy promptly. The Hon'ble Court further observed that refusal to condone the delay would result in foreclosing a suitor from putting forth his cause. There is no

presumption that delay in approaching the Court is always deliberate. The Hon'ble Supreme Court in SLP (Civil No. 12980 of 1986, decided on 19th Feb., 1987, in the case of Collector, Land Acquisition & Ors. vs. Mst. Katiji & Ors. [Reported at (1987) 62 CTR (Syn) 23 (SC)] has laid down the following guidelines:

- 1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.***
- 2. 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 then can happen is that a cause would be decided on merits after hearing the parties.***
- 3. "Every day's delay must be explained" does not mean that a pedantic approach should be made, why not every hour's delay, every second's delay. The doctrine must be applied on a rational commonsense pragmatic manner.***
- 4. When substantial justice and technical considerations are pitted against each other, 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.***
- 5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.***
- 6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to so."***

3.4 Considering the facts and judicial precedents relied by the Ld. Counsel with the support of the affidavit of the appellant, we hold that the delay in filing the appeal before Tribunal is neither intentional nor willful but due to the good and sufficient reasons shown on account of wrong advice

by the CA. The Ld. DR although has raised objection to the request of the assessee for condonation, however, he failed to rebut the contention raised by the assessee on bonafide. In the interest of justice, the delay in filing appeal is condoned and appeal admitted on merits.

4. The Ld. PCIT observed that the assessment has been finalized by the Assessing Officer, without carrying out the necessary verification regarding source of cash deposited in the Bank account. Accordingly, in view of provisions contained in clause (a) of Explanation 2 below sub section (1) of section 263 of the I.T. Act, 1961, he proposed to hold the said order passed u/s 143(3) of the Income Tax Act, 1961 dated 10.12.2018 to be erroneous, in so far as it is prejudicial to the interests of revenue and take suitable remedial action, as per section 263 of the Income-tax Act, 1961 by observing as under:

“The perusal of assessment record in the above mentioned case for the assessment year 2011-12 shows that the assessment order had been framed on 10.12.2018 under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter refer to as The Act’). The examination of the assessment order and the facts on record, show certain discrepancies in the assessment order issued. A show cause notice was therefore issued to the assessee under section 263 of the Act, vide letter No.3140 dated 16.03.2021 as follows:-

Please refer to the Assessment order in your case framed u/s 143(3) r.w.s. 147 of the Income Tax Act on 10.12.2018 at an income of Rs. NIL-. The perusal of the assessment order and on examination of record for the asstt. year 2011-12, the following points have been noticed:-

“The proceedings u/s 147 of the Income Tax Act, 1961 for the Asstt. Year: 2011-12 were initiated in your case as you did not file any information with respect to the source of cash deposited by you at Rs.78,00,000/-, Rs.27,75,000/- (Rs.10575000) in your savings bank during the relevant period. In response to the notice u/s 148 of the Act, you filed the income tax return declaring income at Rs.NIL/- on 15.09.2018.. Assessment in your case was framed on 10.12.2018 u/s 143(3) of the Income Tax Act and return income was accepted. The perusal of the asstt. records reveals that the source of cash deposits of Rs.19,00,000/- has remained unverified/ unexplained.

2. Accordingly, in view of above facts and circumstances, it is apparent that the assessment has been finalized in your case by the then Assessing Officer, without carrying out the necessary verification regarding source of cash deposited in the Bank account. Accordingly, in view of provisions contained in clause (a) of Explanation 2 below sub section (1) of section 263 of the I.T. Act, 1961, I propose to hold the said order passed u/s 143(3) of the Income Tax Act, 1961 dated 10.12.2018 to be erroneous, in so far as it is prejudicial to the interests of revenue and take suitable remedial action, as per section 263 of the Income-tax Act, 1961. For sake of natural justice you are given an opportunity to file your reply/objections, if any, to the proposed action before the undersigned by 22.03.2021 on which date your case stands fixed for hearing at 11.00 A.M. in the office of the undersigned at Aayakar Bhawan, Rishi Nagar, Ludhiana. The reply alongwith supporting documentary evidence, if any, may kindly be sent online or email which shall be duly considered before taking final decision in the matter.

2. The above show cause notice was issued through Speed Post as well as through ITBA System on 16.03.2021 fixing the case for 22-03-2021. The show cause notice was served on 17-03-2021. In response to the show cause on the given notice, the assessee submitted her reply online stating that whatever information was demanded by the A.O. were provided by her. But with his reply the assessee has neither attached any documents nor furnished the details of evidences which he quoted to produced before the A.O. during assessment proceedings.

3. In view of the above, it is apparent that the Assessing Officer has passed the order u/s 143(3) of the Act, without making required enquiries and verification in respect of the above issues, which should have been made before passing the order u/s 143(3) of the Act. Therefore, the order passed by the Assessing Officer is held to be erroneous and prejudicial to the interest of the revenue. The case is,

therefore, set aside to the file of the A.O. for fresh assessment on the above mentioned issue.”

5. The Ld. Counsel for the appellant submitted that on the facts and circumstances of the case, Learned Pr. Commissioner of Income Tax, Jalandhar-1 ('Ld. CIT') has grossly erred in law in passing order u/s 263 of the Act, as the assessment order u/s 143(3) r.w.s 147 of the Act dated 10.12.2018 passed by the Assessing Officer was neither erroneous nor prejudicial to interest of revenue; that the assessment has already been framed by the Assessing Officer u/s 143(3) r.w.s 147 of the Act after seeking explanations and making all the enquiries necessary for completion of assessment reopened u/s 148 of the Act for specific issue of cash deposit of Rs. 1,05,75,000/- in Punjab Gramin Bank, Manakdheri and Punjab National Bank, Muradpur.

5.1 The Ld. AR argued that the proceedings were initiated u/s 263 of the Act on the basis of audit objection and consequent order passed u/s 263 of the Act is opposed to judgment of Honorable Punjab and Haryana High Court in the case of "COMMISSIONER OF INCOME TAX vs. SOHANA WOOLLEN MILLS HIGH COURT OF PUNJAB AND HARYANA", (2008) 296 ITR 0238 wherein it has been held that mere audit objection, and

because a different view can be taken are not enough to hold that the order of the AO is erroneous or prejudicial to the interest of the Revenue.

5.2 The Counsel further contended that the Id. Commissioner of Income Tax, Jalandhar-1 ('Ld. CIT') has grossly erred in setting aside the assessment framed with the directions to pass fresh order after making necessary enquiries/investigations; that Non issuance of specific directions for assessment to be framed clearly proves that it is a case of only change of opinion and the assessment framed is neither erroneous nor prejudicial to the interest of the revenue and that the order of the Learned Commissioner of Income Tax, Jalandhar-I ('Ld. CIT') u/s 263 is arbitrary, unjust, is based on assumptions & presumptions since no error existed or prejudice was caused to revenue, therefore, the order of the Learned Commissioner of Income Tax, Jalandhar-I ('Ld. CIT') passed u/s 263 of the Act deserves to be quashed. The counsel contended that the proceedings initiated u/s 263 of the Act by invoking provisions contained in clause (a) of explanation 2 below sub section 1 of section 263 of the Act is illegal and bad in law since provisions contained in clause (a) of explanation 2 below sub section of section 263 of the Act were introduced by Finance Act 2015 and are not applicable to Assessment Year 2011-12, under consideration.

The AR prayed that therefore, the order of the Learned Commissioner of Income Tax, Jalandhar-I ('Ld. CIT') passed u/s 263 of the Act may be quashed.

6. Per contra, the Ld DR although supported the impugned order, however, he has not filed any rebuttal to the contention raised by the counsel as regards to the 263 proceeding initiated based on audit objection and that the order passed u/s 263 of the act is bad in law, since, provisions contained in clause (a) of explanation 2 below sub section of section 263 of the Act were introduced by Finance Act 2015 which are not applicable to Assessment Year under consideration.

7. Heard rival contentions, perused the material on record, impugned order, written submission and case law cited before us. Admittedly, the proceedings were initiated u/s 263 of the Act on the basis of audit objection (APB, Pgs. 13-16) and consequent order passed u/s 263 of the Act is opposed to judgment of Honorable Punjab and Haryana High Court in the case of SOHANA WOOLLEN MILLS (Supra).

8. From the record, it is established that the Ld. PCIT has initiated the proceedings u/s 263 of the Act by invoking provisions contained in clause (a) of explanation 2 to sub section 1 of section 263 of the Act. In our view,

the subject proceeding initiated by the Ld. PCIT u/s 263 of the Act, is illegal and bad in law, since the provisions contained in clause (a) of explanation 2 below to section of section 263 of the Act were introduced by Finance Act 2015 are not applicable retrospectively and therefore, clause (a) of explanation 2 to sub section 1 of section 263 of the Act, is not applicable to Assessment Year (2011-12), under consideration.

9. In the above view, we hold that the order of the Learned Commissioner of Income Tax, Jalandhar-I ('Ld. CIT') passed u/s 263 of the Act, is bad in law and as such it is quashed.

10. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 22.03.2023

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

GP/Sr./P.S.

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By Order