

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member
AND
Shri K. Narasimha Chary, Judicial Member

ITA No.729/Hyd/2022		
Assessment Year: 2014-15		
Shri Kishore Kumar Narsapur PAN:ACWPK3278H (Appellant)	Vs.	Dy. C. I. T. Central Circle 1(2) Hyderabad (Respondent)
Assessee by:	Shri K.A. Sai Prasad, CA	
Revenue by:	Shri K.P.R.R. Murthy, CIT(DR)	
Date of hearing:	21/03/2023	
Date of pronouncement:	24/03/2023	

ORDER

Per R.K. Panda, A.M

This appeal filed by the assessee is directed against the order dated 22.7.2022 of the learned CIT(A)-11 Hyderabad, relating to A.Y.2014-15.

2. Although a number of grounds have been raised by the assessee, however, these all relate to the ex-parte order of the learned CIT (A) in confirming the levy of penalty of Rs.11,00,000/- made by the Assessing Officer u/s 271(1)(c) of the Act.

3. Facts of the case, in brief, are that the assessee is an individual and engaged in the business of gold and pawn broking in the name and style of M/s. Jaidev Jewellers and Jawanmal

Gulabchand Bankers respectively at Narsapuram wherein he is the proprietor. A survey operation u/s 133A of the I.T. Act, Act 1961 was conducted in the business premises of the assessee on 12.5.2013 and certain incriminating material was found and impounded. The assessee filed his original return of income for the A.Y 2014-15 on 29.11.2014 admitting total income of Rs.8,45,310/-. The case was selected up for scrutiny and statutory notice u/s 143(2) of the Act was issued on 24.9.2015 and the assessment was completed on 30.12.2016 u/s 143(3) assessing the income at Rs.23,45,438/- wherein the following additions were made:

S.No	Item	Addition made (Rs.)
1	Difference in closing stock (Gold)	12,12,959
2	Difference in closing stock (Silver)	53,769
3	Excess silver stock admitted in IDS	2,33,400

3.1 During the course of scrutiny proceedings, the assessee admitted the discrepancy in closing stock of gold. Further, he stated that the gross weight of gold ornaments includes stones, pearls and wax items which cannot be ignored as a contributing factor for such difference. Considering the submissions of the assessee, the value of excess stock of gold was worked out to Rs.12,12,959/- and added to the total income.

4. In appeal, the learned CIT (A) upheld the action of the Assessing Officer on the ground that the assessee could not prove that the stock did not pertain to him and that the assessee could not produce any material evidence in this regard.

5. The Assessing Officer thereafter initiated proceedings u/s 271(1)(c) of the Act. Rejecting the various explanations given

by the assessee, the Assessing Officer levied penalty of Rs.11,00,000/-.

6. In appeal, the learned CIT (A) sustained the penalty so levied by the Assessing Officer by observing as under:

“6. The decision:

In the instant case, assessment was completed u/s 143(3) on 30.12.2016 by making various additions amounting to Rs.15,00,128 being difference in closing stock of gold and silver and excess silver stock admitted in IDS.

Subsequently, penalty u/s 271(1)(c) amounting to Rs.11,00,000/- was levied vide order dated 29.03.2019 against which the appellant had filed an appeal. The appeal was dismissed by CIT(A) on account of delay vide order in Appeal No. 10423/2019-20 dated 24.02.2021.

Against the order of CIT(A), the appellant filed an appeal before the Hon'ble ITAT wherein the Hon'ble ITAT vide order in ITA No.172/Hyd/2021 dated 29.10.2021 restored the file to CIT(A) with a directions to give 3 effective opportunities for fresh adjudication on merits after affording adequate opportunity to the assessee to explain the delay.

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Kishore Kumar Jain
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The appellant filed the same reason which has already been considered and the same was rejected vide order in Appeal No.10423/2019-20 dated 24.02.2021, the relevant part of which is reproduced as under:

"In this regard, it is to be noted that there is a delay of 320 days in filing of this appeal for which no cogent reason has been given by the appellant and accordingly, the application for condonation of the delay was rejected in purview of exercise of provisions of Section 249(3) of the IT Act, 1961 vide order dated 10.02.2021 which is reproduced as under:



कार्यालय आयकर अपील (अपील) - 11,
Office of the Commissioner of Income Tax (Appeals)-11,
6th Floor, Rayakar Bhawan, Basheerbagh, Hyderabad-500 004
Tel/Fax: 040-23425531; E-mail: hyderabad.cit.ap11@incometax.gov.in

F. No. CIT(A)-11/Hyd/Condonation of delay/2020-21

Dt. 10-02-2021

To,
Shri Kishore Kumar Jain
H.No 5-9/6-32,
Main Road,
Narasapur - 534 275
West Godavari (Dt.), A.P

Sub: Condonation of delay - Regarding,

Ref: Appeal No.10423/2019-20.

CONDONATION OF DELAY

The appeal was instituted against the order dated 29.03.2019 passed u/s.271(1)(c) of the I.T Act, 1961 by the DCIT, Central Circle-1(2) Hyderabad, for A.Y.2014-15. As per Form 35 filed by the appellant, the appellant was in receipt of the order u/s. 271(1)(c) on 05.04.2019 and the due date of filing the appeal was 05.05.2019. However, the appeal was filed on 20.03.2020 with a delay of 320 days.

2.0 The appellant has filed a petition for condonation of delay wherein it was submitted that the penalty order u/s 271(1)(c) was received on 05.04.2019 and was given to the staff of the tax consultant through his relatives who have misplaced the same. After the tax consultant was changed, it was brought to the appellant's notice that the appeal was not filed and only then the appeal was filed which resulted in late filing of appeal.

3.0 In this regard, it is seen that the appeal was filed on 20.03.2020 which was after the announcement of DTVSV scheme and it appears as an

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afterthought on the part of the appellant to file the appeal and claim undue benefit of DTSSV scheme

Further, the contention of the appellant that he had to rely on the relatives for receiving notices and order of Income Tax department is not correct as the assessment order, show causes, the penalty notices and further the penalty order itself were served to the appellant through speed post as seen from records.

In view of the above, the delay being 320 days has not been justified by the appellant with any bonafide reason adduced with any cogent evidence. It is also seen from the appellate order of quantum proceedings that the appeal was filed in time and was subsequently dismissed against the appellant. Therefore, the records very clearly indicate that the appellant was aware of the procedure of filing appeal and cannot take any plea of the kind which has been submitted.

In view of the above facts and circumstances, the application for condonation of the delay is rejected as no sufficient cause has been brought out for not presenting the appeal in time. This order is passed in the purview of exercise of provisions of Section 249(3) of the IT Act, 1961.

(RAJEEV RANKA)

आयकर आयुक्त / Commissioner of Income-tax,
(अपील/Appeals)-11, हैदराबाद/Hyderabad.

Copy to
The Pr. Commissioner of Income Tax (Central), Hyderabad.

In view of the above, the appeal is dismissed in limine on account of inordinate delay in filing of appeal without any bonafide justification."

The appellant has not filed any bonafide reasons for delay in filing of appeal and as stated above, the appellant has filed the same reason which has already been considered and rejected.

In view of the same, the appeal is dismissed in limine on account of delay.

Further, in the current set-aside appeal proceedings, nine opportunities are provided and the appellant/appellant's A.R failed to produce any

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explanation in support of appellant's claim. The details of hearings are as under:

Date	Remarks
06.01.2022	Fresh hearing notice with DOH on 13.01.2022 issued
13.01.2022	No compliance.
17.01.2022	Fresh hearing notice with DOH on 24.01.2022 issued.
24.01.2022	No compliance.
27.01.2022	The appellant filed submissions explaining delay.
11.02.2022	Fresh hearing notice with DOH on 17.02.2022 issued.
16.02.2022	The appellant filed request letter for adjournment.
18.02.2022	Fresh hearing notice with DOH on 03.03.2022 issued.
03.03.2022	No compliance.
04.03.2022	Fresh hearing notice with DOH on 10.03.2022 issued.
10.03.2022	No compliance.
01.04.2022	Fresh hearing notice with DOH on 08.04.2022 issued.
08.04.2022	No compliance.
19.04.2022	Fresh hearing notice with DOH on 26.04.2022 issued.
26.04.2022	No compliance.
31.05.2022	Fresh hearing notice with DOH on 09.06.2022 issued.
09.06.2022	No compliance.
28.06.2022	Fresh hearing notice with DOH on 06.07.2022 issued.
05.07.2022	No compliance.

6.2 Neither appellant nor Authorized Representative appeared on the dates posted for hearing on several occasions as mentioned above. The appellant failed to appear before the undersigned and substantiate its grounds of appeal with evidences. However, several opportunities have been granted in the interest of natural justice. Hence, no further adjournments in this case can be granted.

6.3 As there is no response to appeal notices, the appeal is liable to be dismissed in terms of verdicts of the Hon'ble Apex Court and the various High Courts. The Hon'ble Apex Court, in the case of CIT v. B.N.Bhattacharjee and another (10 CTR 354) held that an appeal means an effective appeal--

“expression “prefer an appeal” would mean effectively prosecuting an appeal”

Purposefully interpreted, preferring an appeal means more than formally filing it but effectively pursuing it. If a party retreats before the contest begins, it is as good as not having entered the fray.

The Hon'ble MP High Court in Estate of Late Tukojirao Holkar v. CIT, 223 ITR 480(MP) has held that if a party, at whose instance the reference is made, fails to appear at the hearing, or fails in taking steps for preparation of paper books so as to enable hearing of the reference, the court is **not bound** to answer the reference. Similar view has also been taken in the case of CIT v. Multiplan (India) Pvt. Ltd., 38 ITD 320 (Del). Following the ratio of Multiplan (India) Ltd (supra), the Chennai Tribunal has also dismissed appeal for non-prosecution in the case of M/s Helios and Matheson Information

Technology Ltd v ITO in ITA No.134/Mds/2011 dated 5.7.2011 for A.Y.2006-07. It is pertinent to add here that the laws assist those who are vigilant and not those who sleep over their rights. This principle is embodied in the well known maxim "*Vigilantibus non dormientibusjurasubveniunt*". It means equity comes to the aid of the vigilant and not the slumbering. In all actions, suits and other proceedings at law and in equity, the diligence and careful plaintiff is favoured to the prejudicial of him who is careless. In view of the above, the appeal is liable to be dismissed.

6.4 Even on merits, it is seen that the appellant could not prove the difference in closing stock which was under reported. The findings of the Assessing Officer in the penalty order is reproduced as under:

“3. Difference in closing stock in respect of Gold

3.1 During the course of scrutiny proceedings, the assessee admitted the discrepancy in closing stock of gold. Further, he stated that the gross weight of gold ornaments includes stones, pearls and wax items which cannot be ignored as a contributing factor for such difference. Considering the submission of assessee, the value of excess stock of gold was worked out to Rs.12,12,959/- and added to the total income.

3.2 During appellate proceedings, the grounds of appeal raised by the assessee that the ornaments available in stock represent those received for alterations/repairs and does not represent the income of assessee, were rejected by CIT(A). It was held that the assessee could not prove that the stocks available did not pertain to him nor the assessee could produce any substantial material evidence in this regard.

3.3 The assessee has failed to explain the excess stock found in his premises both during the assessment proceedings and at the appellate stage. This amounts to concealment of income. For this reason penalty notice u/s 271(1)(c) for the AY 2014-15 was issued to the assessee dated 30.12.2016. Subsequently, the assessee was given an opportunity notice dated 30.01.2019 to file his submissions in response to penalty notice u/s 271(1)(c).

3.4 There was no response from the assessee to the original notice as well as final opportunity notice. In this regard, it is presumed that the assessee has no explanation to offer in respect of penalty proceedings.

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3.5. In view of this, it is held that the assessee has concealed income of Rs.12,12,959/- in terms of sec.271(1)(c)."

The above act of the appellant of not reporting the correct quantity of stock is not bonafide and further in this manner the appellant has concealed particulars of income, therefore the Assessing Officer has correctly levied the penalty u/s. 271(1)(c) and the action of the Assessing Officer in levying penalty is upheld and the ground no.1, 2 and 3 are dismissed accordingly. Needless to state, no justification has been furnished by the appellant inspite of several opportunities as stated above.

Further, it is also pertinent to mention here that the appellant had opted VSV scheme and the same was rejected on account of delay in filing of appeal, which further establishes the fact that the appellant has nothing to substantiate its case on merits.

To sum up, the appeal is **dismissed** in limine on account of inordinate delay in filing of appeal without any bonafide justification and the appeal is also liable to be dismissed on account of non-prosecution and on merits.



(RAJEEV RANKA)
आयकर आयुक्त / Commissioner of Income-tax,
(अपील/Appeals)-11, हैदराबाद/Hyderabad.

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1. The Appellant
2. The Dy. CIT, Central Circle-1(2), Hyderabad
3. The Addl.CIT, Central Range-1 Hyderabad.
4. The Pr. Commissioner of Income Tax

7. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal.

8. The learned Counsel for the assessee submitted that the Assessing Officer levied penalty of Rs.11,00,000/- which comes to 298% of the tax sought to be evaded. Relying on various decisions, he submitted that such penalty should be reduced to 100% of tax sought to be evaded.

9. The learned Dr, on the other hand, heavily relied on the order of the CIT (A) and submitted that the CIT (A) has given justifiable reasons while upholding the penalty of Rs.11.00 lakhs levied by the Assessing Officer u/s 271(1)(c) of the Act and therefore, the same should be upheld.

10. We have heard the rival arguments made by both the sides and perused the record. It is an admitted fact that the Assessing Officer made addition of Rs.12,12,959/- being the value of excess stock of gold on the ground that the assessee could not substantiate with evidence that the stock available with him did not pertain to him. Accordingly, the Assessing Officer brought to tax an amount of Rs.12,12,959/- which was upheld by the CIT (A) in the quantum appeal and the Assessing Officer thereafter initiated penalty proceedings u/s 271(1)(c) of the Act and levied penalty of Rs.12,12,959/-. We find the learned CIT (A) upheld the penalty levied by the Assessing Officer, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the learned Counsel for the assessee that the penalty so levied by the Assessing Officer at Rs.11,00,000/- comes to 298% of the tax sought to be evaded which is on the higher side and therefore, is not justified. It is his submission that although the assessee could not substantiate the excess stock of gold, however, it does not call for the maximum penalty leviable under the provisions of the Act and he has no objection if such

penalty is reduced to the minimum penalty prescribed under the provisions of the Act. Considering the totality of the facts of the case, we are of the considered opinion that levy of penalty of 100% of the tax sought to be evaded will meet the ends of justice, we, therefore, modify the order of the CIT (A) and direct the Assessing Officer to restrict the penalty u/s 271(1)(c) of the Act at 100% of the tax sought to be evaded. The Assessing Officer shall calculate the penalty @ 100% of the tax sought to be evaded. The grounds raised by the assessee are accordingly partly allowed.

11. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the Open Court on 24th March, 2023.

Sd/- (K. NARASIMHA CHARY) JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
--	--

Hyderabad, dated 24th March, 2023.

Vinodan/sps

Copy to:

S.No	Addresses
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3	Pr.CIT Central, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order