

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA Nos. 267 & 268/RPR/2022
निर्धारण वर्ष / Assessment Year : 2014-15

Sandeep Kaur Gill
26/934, Shukla Colony,
Raja Talab, Raipur (C.G.)-492 001
PAN: ADCPG7812K

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-3(4), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sunil Kumar Agrawal, CA
Revenue by : Shri Ram Tiwari, Sr. DR

सुनवाई की तारीख / Date of Hearing : 22.11.2023

घोषणा की तारीख / Date of Pronouncement : 24.11.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The captioned appeals filed by the assessee are directed against the orders passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 15.09.2022, which in turn arises from the orders passed by A.O under Sec. 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act') dated 29.05.2018 for the assessment year 2014-15 AND u/s. 147 r.w.s.143(3) of the Act dated 23.12.2017 for A.Y.2014-15. As the issues involved in the captioned appeals are inextricably interlinked or in fact interwoven, therefore, the same are being taken up and disposed off by way of a consolidated order.

2. We shall first take up the appeal filed by the assessee in ITA No.267/RPR/2022 for assessment year 2014-15 and the order, therein, passed shall *mutatis-mutandis* apply to the remaining appeal. The assessee has assailed the impugned order on the following grounds of appeal:

“1. On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in sustaining the penalty imposed u/s. 271(1)(c) of Rs.3,17,452/-.

2. The appellant craves leave, to add, urge, alter, modify or withdraw any ground/s before or at the time of hearing of the appeal.”

3. Controversy involved in the present appeal lies in a narrow compass i.e. sustainability of the order of the CIT(Appeals) who had sustained the penalty of Rs.3,17,452/- levied u/s. 271(1)(c) of the Act by the A.O.

4. Shri Sunil Kumar Agrawal, Ld. Authorized Representative (for short 'AR') for the assessee at the threshold of hearing of the appeal submitted that the present appeal involves a delay of 44 days. It was submitted by him that the delay in filing of the appeal had occasioned because the assessee had failed to check his E-mail Id where the aforesaid order of the CIT(Appeals) was dropped. The Ld. AR had drawn our attention to an "affidavit" dated 05.01.2023 filed by the assessee explaining the reasons leading to the delay. For the sake of clarity the relevant contents of the "affidavit" is culled out as under:

शपथ पत्र

मैं, श्रीमति संदीप कौर गिल, पति श्री लखवंत सिंह गिल, उम्र 55 वर्ष, निवासी, शुक्ला कॉलोनी, राजातालाब, रायपुर (छ.ग.) शपथपूर्वक कथन करती हूँ कि:-

1. यह कि, मैं श्रीमति संदीप कौर गिल, जो कि, मेसर्स न्यू जीवन महेन्द्रा बस सर्विस की प्रोप्राइटर हूँ, जिसमें बस ट्रांसपोर्ट का व्यवसाय पिछले 10-15 वर्षों से हो रहा है।
2. यह कि, मैं आयकर निर्धारिती हूँ मेरा पैन नं. ADCPG7812K है। मैंने कर निर्धारण वर्ष 2014-15 का आयकर विवरणी ITO, रायपुर, छ.ग. में दिनांक 20.03.2015 को जमा किया था।
3. यह कि, कर निर्धारण वर्ष 2014-15 का माननीय कमीश्नर अपील, रायपुर छ.ग. द्वारा दिनांक 15.09.2022 को आदेश (जो कि आयकर अधिनियम कि धारा 271(1)(C) के विरुद्ध थी) पारित किया गया था जिसमें मेरी अपील, माननीय कमीश्नर अपील, रायपुर छ.ग. द्वारा नकार दिया गया था।
4. यह कि आयकर पोर्टल में मेरा व्यक्तिगत ई-मेल आई.डी दर्ज है जो कि मेरे द्वारा सामान्यतः उपयोग में नहीं लाया जाता है। अतः मैं उस मेल आई.डी. में आया हुआ मेल (उपरोक्त आदेश) चेक नहीं कर पायी। मेरी उम्र 55 वर्ष है और मेरा स्वास्थ्य विगत 3-4 माह से ठीक नहीं चल रहा है। इस कारणवश उपरोक्त आदेश जो कि माननीय कमीश्नर अपील के द्वारा का पारित किया गया, जो मुझे प्राप्त नहीं हुआ।

Sandeep kaur
शपथकर्ता
(संदीप कौर गिल)

रायपुर
दिनांक - 05.01.2023

The Ld. AR in support of his contention that the delay of 44 days involved in filing of the present appeal merits to be condoned has relied on the following judicial pronouncements:

(i) Collector, Land Acquisition Vs. Mst. Katiji & Ors. (1987) 167 ITR 471 (SC)

(ii) Senior Bhosale Estate (HUF) Vs. Assistant Commissioner of Income Tax, (2019) 419 ITR 732 (SC)

5. Per contra, the Ld. Departmental Representative (for short 'DR') had objected to the seeking of the condonation of delay in filing of the present appeal by the assessee appellant.

6. On a careful perusal of the facts leading to the delay in filing of the present appeal, we are unable to persuade ourselves to subscribe to the assessee's explanation based on which she has sought for condonation of delay therein involved. We, say so, for the reason that the failure on the part of the assessee to check her E-mail account where the order of the CIT(Appeals) was dropped can by no means be held as a justifiable reasons which would go to explain the delay involved in filing of the appeal. Also, the claim of the assessee in her "affidavit" dated 05.01.2023 that she had been running unwell for the last 3-4 months is not only an unsubstantiated claim but also, is not relevant for explaining the impugned delay for the period when the appeal was supposed to be filed i.e. latest by 15.11.2022. As explanation of the assessee regarding the reasons leading to delay in filing of the present appeal is devoid and bereft of any merit, the same, thus, cannot be summarily accepted on the very face of it. Considering the lackadaisical

conduct of the assessee wherein she had without any justifiable reason delayed the filing of the present appeal, we are unable to persuade ourselves to concur with the claim of the Ld. AR that the delay in filing of the appeal had occasioned for bonafide reasons.

7. Alternatively, we find that though the assessee had deposited the appeal fees of Rs.10,000/- on 13.12.2022 but despite being well aware that the filing of the appeal was already delayed, had, however adopted a lackadaisical approach and most casually kept the filing of the said appeal in abeyance for next 15 days and filed the same as per her choice only on 28.12.2022. Based on our aforesaid observations, we are of a strong conviction that the delay in filing of the appeal is not for any bonafide reason but in fact, backed by sheer carelessness on the part of the assessee.

8. The co-ordinate bench of the Tribunal in the case of **M/s. Phoenix Mills Ltd. Vs. Asstt. CIT in ITA No.6240/MUM/2007 for A.Y.1999-2000, dated 23.03.2020**, had held that where an application for condonation of delay has been moved bonafide, then, the Court would normally condone the delay, but where the delay has not been explained at all and in fact there is an unexplained and inordinate delay coupled with negligence or sheer carelessness, then, the discretion of the court in such cases would normally tilt against the applicant. Reverting to the facts of the present case, we have already examined the reasons that had led to the inordinate delay, which has not been explained by the assessee to have occasioned due to bonafide reasons. As observed by us hereinabove, as

there was no justifiable reason for the assessee to file the appeal before us after 44 days, therefore, there appears to be no reason to adopt a liberal view and condone the delay therein involved. Also, we may observe at this juncture that the law of limitation has to be construed strictly as it has an effect of vesting on one and taking away the right from the other party. The delay in filing of the appeal cannot be condoned in a mechanical or a routine manner since that would undoubtedly jeopardize the legislative intent behind Section 5 of the Limitation Act.

9. We may herein observe that the **Hon'ble Apex Court** in the case of **State of West Bengal Vs. Administrator, Howrah 1972 AIR SC 749**, had held that the expression "sufficient cause" should receive a liberal construction so as to advance substantial justice, particularly when there is no motive behind the delay. The expression "sufficient cause" will always have relevancy to reasonableness. The action which can be condoned by the court should fall within the realm of normal human conduct or normal conduct of a litigant. However, as observed by us hereinabove, as the assessee appellant in the present case is acting in defiance of law, therefore, there can be no reason to allow her application and condone the substantial delay of 44 days involved in preferring of the captioned appeal.

10. Also, we may herein draw support from a Third Member decision of a co-ordinate Bench of the Tribunal, in the case of **Jt. CIT Vs. Tractors and Farm Equipments Ltd. (2007) 104 ITD 149 (Chennai)**, wherein a fine distinction was drawn between normal delay and inordinate delay. It was held as under:

“A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach, but in the latter case no such consideration may arise and such a case deserves a liberal approach.”

In the present case, the delay of 44 days cannot be simply condoned on the basis of the unsubstantiated claim of the assessee that the same had occasioned on account of her sheer carelessness to check her e-mail account where the order of the CIT(Appeals) was dropped. Even, if the aforesaid claim of the assessee is accepted, still there is no explanation as to why the assessee after depositing the Tribunal fees of Rs.10,000/- on 13.12.2022, had further delayed the filing of the appeal by a period of 15 days and filed the same only as on 28.12.2022. As observed by us hereinabove, the conduct of the assessee reveals beyond doubt that the delay in filing of the appeal had occasioned on account of sheer negligence and carelessness on her part as regards filing of the present appeal within the stipulated time period.

11. Also, as observed by the **Hon'ble Supreme Court** in the case of **Ramlal, Motilal and Chotelal Vs. Rewa Coalfields Ltd. AIR (1962) 361 (SC)** that seeker of justice must come with clean hands, therefore, now when in the present appeals the assessee appellant had failed to come forth with any good and sufficient reason that would justify condonation of the delay involved in preferring of the captioned appeal, therefore, we decline to condone the delay of 44 days and, thus,

without adverting to the merits of the case dismiss the captioned appeal of the assessee as barred by limitation.

12. Apropos the reliance placed by the Ld. AR on the judgment of the **Hon'ble Apex Court** in the case of **Collector, Land Acquisition Vs. Mst. Katiji and Others (supra)**, the same being distinguishable on facts as against those involved in the captioned appeal before us, thus, would not assist her case. The Hon'ble Apex Court, stressing upon considering of a "sufficient cause" by the Courts, while deciding as to whether the delay involved in the filing of the appeal merits to be condoned, had observed that the said term 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 which is the life purpose of existence of the institution of courts. At the same time, the Hon'ble Apex Court had, while observing that the courts should do even-handed justice on merits in preference to the approach that scuttles a decision on merits, had inter alia, held that an appeal or any application may be admitted after the prescribed period if the appellant or applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period. For the sake of clarity, the observations of the Hon'ble Apex Court are culled out as follows:

"1. Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908. may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."

(emphasis supplied by us)

As in the case of the present assessee appellant before us, there is delay of 44 days involved in the filing of the appeal by the assessee appellant the reason for which she had failed to explain, and the same appears to be attributable to the callous approach and lackadaisical conduct that she had adopted at the stage of filing of the appeal before us, therefore, the judgment mentioned above of the Hon'ble Apex Court in the case of Collector, Land Acquisition Vs. Mst. Katiji and Others (supra) would not carry her case any further. Accordingly, as in the captioned appeal before us, as there is no "sufficient cause" expressed by the assessee appellant leading to the delay of 44 days in the filing of the appeal before us, therefore, the judgment above would not assist her case before us.

13. In so far the judgment of the **Hon'ble Apex Court** in the case of **Senior Bhosale Estate (HUF) Vs. Assistant Commissioner of Income Tax (supra)** as had been relied upon by the Ld. AR to support his claim that the delay involved in filing of the present appeal merits to be condoned, we are of the view that as the same is distinguishable on facts, therefore, the same would not carry the case of the assessee any further. We, say so, for the reason that in the aforesaid case of Senior Bhosale Estate (HUF) Vs. Assistant Commissioner of Income Tax (supra), the assessee admittedly had no knowledge about passing of the order dated 29.12.2003 by the Tribunal until they were confronted with the auction notices in June, 2008 issued by the competent authority. Unlike the facts involved in the aforementioned case, the assessee before us as on the date on which she had

deposited challan of Rs.10,000/- towards appeal fees on 13.12.2022 was not only aware about the order of the CIT(A), dated 15.09.2022 but was till vigilant of the fact that the appeal against the said order was already delayed by 29 days. Instead of expediting the filing of the appeal, which was already delayed, we find that the assessee had continued with her lackadaisical approach and filed the appeal after a further lapse of 15 days i.e. on 28.12.2022. Carelessness on the part of the assessee who despite being well aware that the appeal against the impugned order passed by the CIT(Appeals) was already delayed, had further added to the aforesaid delay for which, no explanation has been given before us, which, thus, proves to the hilt that the delay so involved had occasioned due to negligence or sheer carelessness on her part. Accordingly, as the facts involved in the case before us are distinguishable as against those which were there before the Hon'ble Apex Court in the case of Senior Bhosale Estate (HUF) Vs. Assistant Commissioner of Income Tax (supra), therefore, the same would not assist the case of the assessee.

14. In the result, the appeal of the assessee in ITA No.267/RPR/2022 for A.Y. 2014-15 is dismissed in terms of our aforesaid observations.

ITA No.268/RPR/2023
A.Y.2014-15

15. In the captioned appeal, the assessee has assailed the impugned order on the following grounds of appeal:

“1. On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in sustaining the addition of Rs.10,57,752/- u/s. 68 on the count of unexplained cash credit being unexplained receipts.

2. The assessee craves leave, to add, urge, alter, modify or withdraw any ground/s before or at the time of hearing of the appeal.”

16. Controversy involved in the present appeal lies in a narrow compass, i.e. sustainability of the order of the CIT(Appeals) who had upheld the addition/disallowance of Rs.10,57,752/- on account of the unexplained cash credit made by the A.O u/s. 68 of the Act.

17. Shri Sunil Kumar Agrawal, Ld. Authorized Representative (for short 'AR') at the threshold of hearing of the appeal submitted that the present appeal involves a delay of 44 days. It was submitted by him that the delay in filing of the appeal had occasioned because the assessee had failed to check her E-mail account where the aforesaid order of the CIT(Appeals) was dropped. The Ld. AR had drawn our attention to an “affidavit” dated 05.01.2023 filed by the assessee explaining the reasons leading to the delay. For the sake of clarity the relevant contents of the “affidavit” is culled out as under:

शपथ पत्र

मैं, श्रीमति संदीप कौर गिल, पति श्री लखवंत सिंह गिल, उम्र 55 वर्ष, निवासी, शुक्ला कॉलोनी, राजातालाब, रायपुर (छ.ग.) शपथपूर्वक कथन करती हूँ कि:-

1. यह कि, मैं श्रीमति संदीप कौर गिल, जो कि, मेसर्स न्यू जीवन महेन्द्रा बस सर्विस की प्रोप्राइटर हूँ, जिसमें बस ट्रांसपोर्ट का व्यवसाय पिछले 10-15 वर्षों से हो रहा है।
2. यह कि, मैं आयकर निर्धारिती हूँ मेरा पैन नं. ADCPG7812K है। मैंने कर निर्धारण वर्ष 2014-15 का आयकर विवरणी ITO, रायपुर, छ.ग. में दिनांक 20.03.2015 को जमा किया था।
3. यह कि, कर निर्धारण वर्ष 2014-15 का माननीय कमीश्नर अपील, रायपुर छ.ग. द्वारा दिनांक 15.09.2022 को आदेश (जो कि आयकर अधिनियम कि धारा **147 r.w.s 143(3)** के विरुद्ध थी) पारित किया गया था जिसमें मेरी अपील, माननीय कमीश्नर अपील, रायपुर छ.ग. द्वारा नकार दिया गया था।
4. यह कि आयकर पोर्टल में मेरा व्यक्तिगत ई-मेल आई.डी दर्ज है जो कि मेरे द्वारा सामान्यतः उपयोग में नहीं लाया जाता है। अतः मैं उस मेल आई.डी. में आया हुआ मेल (उपरोक्त आदेश) चेक नहीं कर पायी। मेरी उम्र 55 वर्ष है और मेरा स्वास्थ्य विगत 3-4 माह से ठीक नहीं चल रहा है। इस कारणवश उपरोक्त आदेश जो कि माननीय कमीश्नर अपील के द्वारा का पारित किया गया, जो मुझे प्राप्त नहीं हुआ।

Sandeep Kaur
शपथकर्ता
(संदीप कौर गिल)

रायपुर
दिनांक - 05.01.2023

18. As the facts pertaining to the delay involved in the captioned appeal filed by the assessee remains the same as were there before us in the aforementioned ITA No.267/RPR/2022 for assessment year 2014-15, therefore, our order therein passed while disposing off the said appeal shall apply mutatis-mutandis for disposing off the captioned appeal in ITA No.268/RPR/2022 for A.Y. 2014-15. In this case also, we decline to condone the delay of 44 days and, thus, without

adverting to the merits of the case dismiss the captioned appeal of the assessee as barred by limitation as per observations recorded while disposing off the appeal in ITA No.267/RPR/2022 for A.Y. 2014-15.

19. In the result, the appeal of the assessee in ITA No.268/RPR/2022 for A.Y. 2014-15 is dismissed in terms of our aforesaid observations.

20. Resultantly, both the appeals of the assessee are dismissed in terms of our aforesaid observations.

Order pronounced in open court on 24th day of November, 2023.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 24th November, 2023
SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G)
4. The Pr. CIT-1, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.