

IN THE INCOME TAX APPELLATE TRIBUNAL

"SMC" BENCH, MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.2735/Mum./2023
(Assessment Year : 2010-11)

ITA no.2733/Mum./2023
(Assessment Year : 2011-12)

Shri Babulal Mishrimal Mehta
7, Maker Building, Office no.9
1st Panjarapole Lane, Mumbai 400 004
PAN – AFBPM0921N

..... Appellant

v/s

Income Tax Officer
Ward-19(1)(2), Mumbai

..... Respondent

Assessee by : Ms. Pooja Chhawachharia
Revenue by : Shri Nagnath B. Pasale

Date of Hearing – 21/12/2023

Date of Order – 29/12/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeals have been filed by the assessee challenging the separate impugned orders of even date 08/06/2018, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals)-54, Mumbai, [*learned CIT(A)*], for the assessment years 2010-11 and 2011-12.

2. At the outset, we observe that both the appeals filed by the assessee are delayed by 1821 days. Along with the appeals, the assessee has also filed his affidavit seeking condonation of delay in filing the present appeals. For reference, the submission made in the affidavit is reproduced as under:-

"Subject: Condonation of delay in submission of appeal before your honor

My affidavit detailing the aforesaid facts and these may kindly be placed before the Hon'ble Appellate Tribunal for condonation of the delay in submission of the appeal. We pray for condoning the delay as the delay was not intentional neither willful and was due to sufficient reasons laid down in the affidavit underneath.

Before the Income Tax Appellate Tribunal at Mumbai

Affidavit of Mr./Ms. Shri Babulal Mishrimalji Mehta Proprietor of C.M Metal Corporation..

That I the above named deponent am well conversant with the facts deposed to below. That the appeal filed by the Assesse Company before the Commissioner (Appeals) was disposed of by order dated 08.06.2018 passed by Commissioner (Appeals) Mrs. Sunita Billa.

2. That the time for filing of the appeal before the Tribunal was to expire on 08.08.2018.

3. That being aggrieved and being not so conversant with the law and order requested my accountant to do the needful and was been assured by the accountant time and again that he has pursued the matter and are in follow ups with the Department.

4. Due to intervening circumstances like Covid 19, he assured us that all the income tax appeals have been delayed and he is in totally in touch with the Department and asked us to be rest assured.

5. Only when recovery notice was issued and our Chartered Accountant POOJA M CHHAWACHHARIA who was appointed as our auditors, when they checked the portal informed us that recovery notice were served time and again. Immediately we got into action and being aggrieved herewith prefers an appeal before your honor.

4. That the delay in filing the appeal is 1821 days.

3. As per the assessee, he is not conversant with the law and had requested his accountant to do the needful, who had assured him time and again that he was pursuing the matter. It is further submitted that due to intervening circumstances like the COVID-19 pandemic, his accountant assured him that all the Income Tax appeals have been delayed. Only on receipt of the recovery notice from the Department, the assessee engaged the

new Chartered Accountant who upon checking the portal informed that the learned CIT(A) has dismissed the appeals filed by the assessee. Accordingly, the present appeals were prepared and filed before the Tribunal. In view of the above submissions, the assessee sought condonation of delay of 1821 days in filing the present appeals.

4. From the perusal of the impugned order, we find that before the learned CIT(A) except on one occasion, when the assessee's counsel sought an adjournment, there was no compliance on behalf of the assessee. Accordingly, the learned CIT(A) proceeded to decide the appeal on the basis of material available on record. During the hearing before us, the learned Authorised Representative ("*learned AR*") submitted that the impugned order passed by the learned CIT(A) in both the assessment years was not received by the assessee and only after receipt of the recovery notice, the assessee came to know about the impugned orders and proceeded to file the present appeals.

5. On the contrary, the learned Departmental Representative ("*learned DR*") furnished the communication dated 12/12/2023 from the office of the learned CIT(A), wherein it has been submitted that the appeal orders for the assessment years 2010-11 and 2011-12 in the case of the assessee were dispatched by speed post and the same were duly delivered and received at the address given by the assessee on 12/07/2018.

6. From the perusal of the record, we further find that there is no change in the communication address of the assessee since the assessment order, and even in Form No. 36, the assessee has provided the same address on which

the learned DR submitted that the impugned orders were dispatched by speed post. The learned AR could not bring any material on record to controvert the submissions of the learned DR which are also duly supported by the speed post booking list and speed post acknowledgement receipt. Therefore, as the learned DR on the basis of aforesaid documents established that the copy of impugned orders was received at the communication address of the assessee on 12/07/2018, we find no basis in the submissions of the assessee to seek condonation of huge delay of 1821 days in filing the present appeals.

7. Thus, in view of the above and in the facts and circumstances of the present case, we are of the considered view that the assessee has failed to prove any sufficient cause for not preferring the appeals within the limitation period. As a result, both appeals by the assessee are barred by limitation and therefore, are dismissed. As we are dismissing the appeals on the ground of delay, the issues raised in the grounds of appeals are kept open for adjudication.

8. In the result, both appeals by the assessee are dismissed.

Order pronounced in the open Court on 29/12/2023

Sd/-
B.R. BASKARAN
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 29/12/2023

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai