

आयकर अपीलिय अधिकरण
मुंबई पीठ "एफ", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
सुश्री पद्मावती. एस, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
MS. PADMAVATHY.S, ACCOUNTANT MEMBER
आअसं.3742/मुं/2023 (नि.व. 2015-16)
ITA NO.3742/MUM/2023 (A.Y.2015-16)

Farees Ahmed Khalil Ahmed Shaikh,
702 20, B Wing Makali Park,
336 Bazar Road, Bandra(West),
Mumbai – 400 050

PAN: DRDPS-8448-K

..... अपीलार्थी/Appellant

बनाम Vs.

The Income Tax Officer – 23(1)(1),
Mumbai.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : S/Shri K.Gopal and
Om Kandalkar,Advocates
प्रतिवादीद्वारा/ Respondent by : Ms. Rajeshwari Menon
सुनवाई की तिथि/ Date of hearing : 27/02/2023
घोषणा की तिथि/ Date of pronouncement : 27/02/2024

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 21/08/2023, for Assessment Year 2015-16.

2. This appeal emanates from penalty proceedings u/s. 271(1)(c) of the Income Tax Act, 1961 [in short 'the Act']. Consequent to addition of Rs.2.62 crores u/s. 69 of the Act in assessment order dated 28/03/2022 for Assessment Year 2015-16, the Assessing Officer levied penalty of

Rs.89,12,243/- u/s. 271(1)(c) of the Act vide order dated 23/09/2022. The assessee filed appeal before the CIT(A) against the said order. The appeal was time barred by 101 days. The CIT(A) dismissed the appeal of assessee in-limine without condoning the delay.

3. Shri K.Gopal appearing on behalf of the appellant/assessee submits that the assessee is a Non-Resident and is residing in UAE for the past several years. The assessee had given address of his father in the Income Tax Department for service of notice. His father had also shifted from the said given address. Since, the appellant/assessee had no income from any source in India, the appellant never filed return of income after he shifted to UAE. During the period relevant to Assessment Year under appeal, the assessee had purchased immovable property from income sourced in UAE. The said transaction triggered issuance of notice u/s. 148 of the Act. The said notice was not received by the assessee, hence, the assessee could not participate in the assessment proceedings. The Assessing Officer completed the assessment u/s. 147 r.w.s. 144 r.w. 144B of the Act vide order dated 28/03/2022. The penalty proceedings u/s. 271(1)(c) of the Act were also initiated against the assessee. The assessee was unaware of all these proceedings. The Assessing Officer vide order dated 23/09/2022 levied penalty u/s. 271(1)(c) of the Act. The said order was received by the watchman of the building where the father of assessee used to reside. He conveyed the said order to the father of assessee in September, 2022 and, thereafter, the assessee came to know about the Income Tax proceedings against the assessee including assessment and levy of penalty. Since, assessee was not residing in India he remotely from UAE co-ordinated to file appeal against the assessment order as well as against levy of penalty. In this process, filling of appeal got delayed by 100 days. The Id. Counsel for the assessee submitted that the delay in filing of

appeal before the CIT(A) was unintentional. The CIT(A) without appreciating the facts causing delay in filing of appeal dismissed the appeal of assessee in-limine. He further pointed that on merits the assessee has got a good case and prayed for restoring the appeal to CIT(A). He further informed that appeal against the assessment order is still pending for final disposal before the CIT(A).

4. Per contra, Ms. Rejeshwari Menon representing the Department defended the impugned order and prayed for dismissing the appeal. She submitted that the assessee has failed to substantiate reasonable cause for delay in filing of appeal.

5. Both sides heard. The assessee is in appeal against the order of CIT(A) rejecting assessee's prayer for condoning 101 days delay in filing of the appeal. We have examined the reasons given by assessee for delay in filing of the appeal submitted before the CIT(A) in Form No.35. After hearing the submissions of the Id. Counsel for the assessee we are satisfied that the delay in filing of the appeal before CIT(A) is for bonafide reasons narrated in Form No.35 filed before CIT(A) .

6. The Hon'ble Supreme Court of India in the case of Ram Nath Sao alias Ram Nath Sahu & Ors. Vs. Gobardhan Sao & Ors. (2002) 3 SCC 195) has held that acceptance of explanation furnished should be the rule and refusal, an exception. The Hon'ble Court held:

"12..... There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over-jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bona fides can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning

delay in a routine-like manner. However, by taking a pedantic and hypertechnical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates, either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way."

7. The Hon'ble Apex Court in the case of Collector Land Acquisition, vs Mst. Katiji & Ors., 167 ITR 471(SC) held that the explanation furnished by the assessee for seeking condonation should be accepted. The expression "sufficient cause" should be interpreted liberally.

8. We find that in the instant case the First Appellate Authority has taken a pedantic approach in rejecting assessee's reasons explaining delay in filing of appeal. After considering the reasons given by the assessee causing delay in filing of first appeal, we are satisfied that the delay in filing of appeal was for the bonafide reasons and not intentional. Thus, delay of 101 days in filing of first appeal is condoned. The appeal is restored to the CIT(A) for adjudication on merits. The CIT(A) shall grant reasonable opportunity of hearing/make submissions before deciding the appeal, in accordance with law.

9. In the result, appeal of assessee is allowed for statistical purpose.

Order pronounced in the open court on Tuesday the 27th day of February, 2024.

Sd/-

(PADMAVATHY. S)

लेखाकार सदस्य/ACCOUNTANT MEMBER

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Dated: 27/02/2024
Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्तCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
- 5.. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai