

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
ITA No.815/Ahd/2023
Assessment Year : 2013-14

Shri Mahakali Petroleum Through its proprietor Rajnikant Kantilal Patel 2, Laxminagar Society Nr.Sharda Society ST Workshop Road Mehsana 384 002. PAN : AAGFS 5696 C.	Vs.	ITO, Ward-1 Patan.
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Assessee by :	Shri Rushin Patel, AR
Revenue by :	Shri Santosh Kumar, Sr.DR

सुनवाई की तारीख / Date of Hearing : 30/05/2024
घोषणा की तारीख / Date of Pronouncement: 14/06/2024

आदेश/ORDER

PER SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

This is an appeal filed by the assessee against the order of the ld.Commissioner of Income-tax (Appeals), Gandhinagar dated 1.8.2017 for the assessment year 2013-14 under section 250 of the Income Tax Act, 1961 ("the Act" for short).

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

- 1. The ld.CIT(A) has erred in law and on facts of the case in dismissing the appeal as non-est without adjudication on merits.*
- 2. The appellant craves leave to add, amend or alter the grounds of appeal at the time of hearing, if need arise.*

Application for condonation of delay

3. At the outset, we note that there is a delay of 2198 days in filing of the present appeal against the order passed by Ld. CIT(Appeals).

The assessee has filed application for condonation of delay. The brief facts of the case are that during the course of assessment proceedings, certain additions were made by the assessing officer, against which the assessee filed appeal before Id. CIT(Appeals). The Id. Counsel for the assessee submitted that Rule 45 of the Income Tax Rules, 1962, which prescribes the form and manner in which appeal shall be filed to Commissioner (Appeals) was amended by the Income Tax (Third Amendment) Rules, 2016 vide Notification No. 11/2016 (F.No.149/150/2015-TPL) dated 01.03.2016. The said Rule was amended to mandate electronic filing of Form 35 for the purpose of filing appeal to the Commissioner (Appeals) w.e.f. 01.03.2016. However, due to various technic issues faced by the assessee, lack of knowledge about the new e-filing procedure and EVC functionality for verification of appeals being operational only from 19.05.2016, the CBDT issued Circular No. 20/2016 dated 26.05.2016, to allow the assessee who had filed paper appeals after 01.03.2016 to e-file their appeals within the extended time upto 15.06.2016. the assessee had filed paper appeal in Form 35 before the Id. CIT(A) within due time on 01.04.2016 against the assessment order dated 29.02.2016, which was received by them on 04.03.2016. The said appeal was filed in form of paper appeal due to lack knowledge about the new e-filing procedure. The assessee was also not aware about the Circular issued by the CBDT for the same. When the said appeal came up for hearing before the Id. CIT(A) on 02.08.2017, the Id. CIT(A) pointed out the technical defect/mistake of non e-filing of the appeal in view of the aforesaid CBDT Circular and so the assessee e-filed the appeal on 08.08.2017. However, to the utter shock and surprise, the Id. CIT(A) passed order dated 11.08.2017, dismissing the appeal as *non-est*, after stating that, they had not e-filed the appeal till the date of the order as per the status on the ITBA system. This is despite the

assurance by Ld. CIT(Appeals) that the appeal will be heard on merits once the same has been re-filed.

4. On receiving the said order passed by the Id. CIT(A), the assessee immediately filed a rectification application before the Id. CIT(A) on 24.08.2017, as the said order was based on a premise which was contrary to the facts on record. The assessee filed a reminder letter for rectification on 30.01.2018. However, no action has been taken on the said application till date. Since no action has been taken on the rectification application for a very long time, the Applicant consulted another advocate for the possible resolution of the issue and he was advised to file appeal before the Hon'ble ITAT. Thereafter, on such advice, the Applicant immediately forwarded the appeal papers to the office of concerned Advocate for the purpose of filing an appeal before the Hon'ble ITAT and the appeal was filed belatedly by 2198 days. The Ld. Counsel for the assessee submitted before us that it is because of such circumstances that a delay of 2198 days has occurred in filing the appeal by the Applicant. Affidavit of the Applicant dated 04.09.2023 affirming the aforesaid facts on oath was also placed before us. The Ld. Counsel for the assessee requested that this delay may kindly be condoned, keeping in mind that there was no mala fide intention in delayed filing of the same and the circumstances under which the delay has occurred may kindly be considered as a reasonable cause and the appeal may kindly be taken up for hearing in the interest of justice. It was further submitted before us that, it is not a case where the Applicant has been ignorant or has not been vigilant in co-operating with the Income Tax Department. It is pertinent to note that, the Applicant has duly appeared before the lower authorities and none of the orders of the lower authorities are ex-parte orders. The crucial fact of the case is that, the Applicant had already filed appeal electronically and a rectification application

before the Id. CIT(A) and was pursuing the alternate remedy of rectification of the order. The Ld. Counsel for the assessee relied on the judgement of the Hon'ble Supreme Court in the case of N. Balakrishnan v/s. M. Krishnamurthy reported in (1998) 7 SCC 123, wherein it was held that, in absence of anything showing *malafide* or deliberate delay as a dilatory tactic, delay should normally be condoned. It further held that, length of delay is not relevant and acceptability of the explanation is the only criterion and that there is no presumption that delay in approaching the court is always deliberate. The words "sufficient cause" should receive a liberal construction so as to advance substantial justice. The Ld. Counsel for the assessee also relied on the judgement dated 12.10.2022 of the Hon'ble jurisdictional Gujarat High Court in the case of PCIT v. Lavjibhai Swarupchand Mehta in Civil Application No. 1544 of 2021 in Tax Appeal no. 657 of 2022, wherein it was held that, when technicalities are pitted against substantial justice, naturally such technicalities will have to yield or kneel before the substantial justice, or in other words, technicalities will have to make way for substantial justice. On the ground of delay, the larger relief to which the litigant may be entitled to, cannot be deprived of on such technicalities. It further held that, it would be justified to exclude the time consumed in pursuing proceedings/remedy for a right cause before different forum.

5. In response, the Ld. DR submitted that looking into the instant facts, he had no objection to condoning the delay in filing of the present appeal, in interest of justice.

6. We have heard the rival contentions and perused the material on record. We observe from the contents of the appellate order passed by Ld. CIT(Appeals) that the appeal of the assessee was dismissed,

without discussing the merits of the case and only on the ground that the present appeal was required to be e-filed, whereas the assessee had filed Paper Appeal in hard copy format and the same were *non-est* in the eyes of law. Accordingly, Ld. CIT(Appeals) dismissed the appeal of the assessee with the following observations:

“2. It is worth to mention that vide notification No. No.149/150/2015-TPL dated 01/03/2016 of the BDT, there was amendment in the Rule 45 of I. T. Rules, 1962 and according to the amended rules, the appeals before the OT(A) has to be filed electronically the new Form No. 35 devised vide the aforesaid notification. Due to certain constraints, subsequently, the CBDT vide its Circular No. 20 I 2016 dated 26/05/2016 had extended the window for filing e-appeals who could not successfully e-file their appeals previously and had filed paper appeals and according to the aforesaid circular the appellant had to file the e-appeal in accordance with amended Rule 45 before 15/06/2016. However, the appellant has not complied with the notification of the Board dated 01/03/2016 and Circular No.20/2016 dated 26/05/2016 referred above, as no e-appeal has been filed on or before 15/06/2016, and therefore, paper appeal filed in this office on 01/04/2016 is found non-est in view of the provisions of law discussed above. In other words, the paper return, filed is treated as good as no such appeal has been filed by the appellant. Therefore the appeal is dismissed as found non-est and not entertained.

7. Accordingly, looking into the instant facts and in the interest of justice, we are hereby condoning the delay in filing of the present appeal. Further, the matter is being restored to the file of Ld. CIT(Appeals) for de novo consideration, to decide the appeal of the assessee on merits, after giving due opportunity of hearing to the assessee.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Court on 14th June, 2024 at Ahmedabad.

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

**Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER**

Ahmedabad, dated 14/06/2024
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