

IN THE INCOME TAX APPELLATE TRIBUNAL "K(SMC)" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM

And

SHRI SUNIL KUMAR SINGH, JM

ITA No. 2307/Mum/2024

(Assessment Year: 2009 – 10)

M/S Ajit Metal syndicate
123, kika street
Gulawadi
Mumbai – 4

Vs.

Income Tax Officer,
Ward 19 (1) (1)
Piramal Chambers
Lal Baug
Parel
Mumbai-400 012

(Appellant)

(Respondent)

PAN No. AAFA1651M

Assessee by : Shri Satyaprakash Singh CA
Revenue by : Shri Rajnish Yadav , SR DR

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| Date of hearing: | 24 July 2024 |
| Date of pronouncement : | 29 July 2024 |

ORDER

PER PRASHANT MAHARISHI, AM:

1. ITA number 2307/M/2024 for assessment year 2009 – 10 is filed by Ajit metal syndicate (assessee/appellant) against the appellate order passed by the National faceless appeal Centre (Delhi oh) (the learned CIT – A) dated 25/4/2024 wherein the appeal filed by the assessee against the assessment order passed by the income tax officer Ward – 19 (1) (1), Mumbai under section 143 (3) read with section 147 of The Income Tax Act, 1961 (The Act) dated

16/3/2015 was dismissed in limine , by not condoning the delay in filing of the appeal.

2. The assessee is aggrieved with the same and has preferred this appeal raising the grounds of appeal wherein the assessee is aggrieved by not condoning the delay in presenting the appeal before the learned CIT – A even if there is a sufficient cause demonstrated.
3. The brief fact of the case shows that the assessee is a partnership firm who filed its return of income at the total income of Rs. 210,343/- on 24/9/2009 which was processed under section 143 (1) of the income tax act accepting the returned income.
4. Subsequently information was received from The Director General of Income Tax (investigation wing), Mumbai that there was a scam unearthed by the sales tax department regarding issue of hawala business or accommodation entries by several parties where the assessee was found to be the beneficiary. It was found that the assessee has allegedly made purchase of Rs. 15,616,653/- as inflated nongenuine purchases from 21 parties who have issued false bills without delivery of goods.
5. Notice under section 148 of the income tax act was issued to the assessee on 1/3/2014 in response to which the assessee filed a letter dated 6/3/2014 stating to treat the original return filed as return in response to reopening. A subsequent notice under section 142 (1) was also issued on 15/7/2014. Assessee was also provided the reasons recorded. Subsequently notice under section 143 (2) was issued to the assessee on 8/12/2014. The learned assessing officer made an independent enquiry and further the details were called from f the assessee. Assessee submitted copies of the invoices and stated that the payment made to these parties is by account payee cheques. The learned assessing officer held that as the assessee could not produce the vital documents of the delivery challans, transport receipt, goods inward register, therefore there

is no sufficient proof to prove that the goods were actually delivered to the assessee. Accordingly, the books of accounts of the assessee were rejected by invoking the provisions of section 145 (3) of the act. Based on that the learned assessing officer made an addition to the extent of 12.5% of the total in non-genuine purchases of Rs. 15,616,653/- and passed the reassessment order on 16/3/2015 determining total income of the assessee at Rs. 2,162,430/-.

6. Aggrieved, assessee preferred an appeal before the learned CIT – A where in the appeal was filed delayed by 1669 days by the assessee. The assessee submitted that the delay in filing of the present appeal was due to the fact that one of the partner Mr. Uttam Chand Shah was looking after all the income tax -related matters was not well at that time and he was continuously under medical treatment, hospitalized in various hospitals and subsequently expired on 16/4/2019. The other partners did not have much knowledge of income tax matters because all the matters were handled by him and hence the filing of appeal escaped his attention. Thus, the assessee explained that there is a sufficient cause for delay in filing of the appeal before the learned CIT – A. The learned CIT – A has held that he is not satisfied that there is a sufficient cause for not presenting the appeal within the due date specified under section 249 (2) (b) of the act. Therefore, he did not condone the delay and dismissed the appeal.
7. Assessee aggrieved with the order of the learned CIT – A has preferred this appeal before us, and the learned authorized representative specifically stated that the shri Uttam Chand Shah , one of the partners of the assessee firm who was looking after the tax matter was severely ill and was admitted to the various hospitals and ultimately passed away. He submits that due to his ill health, he could not look into the assessment order received . Subsequently the other partner Mr. Hitesh Uttam Chand Shah came to know about not filing the appeal, he filed the appeal immediately,

and therefore there was a delay in the appeal being filed before the learned CIT – A. He submitted that the other partners of the firm were not accustomed to income tax matters and were not aware about the same. When these orders came to the notice of the partners, the appeal was filed before the learned CIT – A. He submits that this is the sufficient cause for filing delayed appeal before the learned CIT – A. It was further his claim that the partnership firm could not have derived any benefit by not filing appeal in time further, there is no mala fide intention in not filing the appeal within the time. It was further submitted that the learned CIT should not have taken a pedantic approach but should have looked into the cause of the delay in filing of the appeal. In fact, he submitted that delay in filing of the appeal should not be looked from the length of the delay but from the sufficient cause aspect of the delay. According to him the learned CIT – A should have condoned the delay and admitted the appeal on the merits.

8. On the merits he submitted that the appeal of the assessee is squarely covered by the decision of the honourable Bombay High Court wherein it has been stated that in case of bogus purchases, only the profit element is required to be added and such profit element is to be measured and to be brought to the extent of untainted purchase compared to the gross profit of tainted purchases. Therefore, a marginal addition is required to be made and the 12.5% addition made by the learned AO is on the higher side. Therefore, the issue is also covered in favour of the assessee by the decision of the honourable Bombay High Court in case of Mohammad haji Adam.
9. The learned departmental representative vehemently supported the order of the learned CIT – A and submitted that delay of 1669 days was not sufficiently explained by the assessee before the learned CIT – A showing any sufficient cause and therefore the delay was not rightly condoned by him. Even on the merit he submitted that

the addition to the extent of 12.5% made by the learned assessing officer is justified.

10. We have carefully considered the rival contention and perused the orders of the learned that lower authorities. The learned assessing officer on finding that the assessee has indulged into obtaining the bogus purchase bills from several parties, he rejected the books of accounts of the assessee under section 145 of the act and thereafter determined profit at the rate of 12.5% of the bogus purchases. When the appeal was filed before the learned CIT – A, it was delayed by 1669 days, the delay explained by the assessee was not found to be sufficient for condoning the delay and therefore the learned CIT – A did not condoned the delay and dismissed the appeal of the assessee in limine. We find that the learned CIT – A has adopted very pedantic approach of not condoning the delay when the cause shown by the assessee is the death of one of the partners of the firm who was looking after the taxation matter and because of his prolonged illness, he could not look into the matter and subsequently when assessment order was found to be unattended, the other partner to be charged and assessee filed the appeal. It is a trite law that expresses 'sufficient cause' is adequately elastic to enable the authorities to apply the law in a meaningful manner which subserves ends of justice. 'Sufficient cause' therefore should be considered with pragmatism injustice oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. Emphasis was laid on the authorities in adopting a liberal and justice oriented approach. Where substantial justice and a technical approach were pitted against each other, a pragmatic approach should be taken with the former being preferred. Substantive rights of the parties, appellant or defendant are not to be defeated at the threshold simply due to technical considerations of delay. We note that the reason for filing appeal delayed is prolonged illness of the partner who was

attending the income tax matters. He ultimately passed away. In view of the above facts, we find that the learned CIT – A should have condoned the delay as there was a sufficient cause in filing appeal belatedly because of the illness of the concerned partner who ultimately passed away. Hence, we condone the delay in filing of the appeal before the learned CIT – A. In view of this, we restore the matter back to the file of the learned CIT – A to decide the appeal on the merits of the case.

11. Accordingly, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 29 July 2024

Sd/-

(SUNIL KUMAR SINGH)
(JUDICIAL MEMBER)

Sd/-

(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 29.07 .2024

Sudip Sarkar, Sr.PS/Dragon

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai