

IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER
आयकर अपील सं./ITA No.80/RJT/2023
(Assessment Year: 2018-19)

Newage Construction Equipment Eng. Co. Survey No.275, Plot No.4B, Galaxy Industrial Estate, B/h Tulsi Metal Rajkot, Veraval, Veraval (Shapar)-360024	Vs.	Commissioner of Income-tax, New Delhi-110001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAJFN 0324 M		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारित की ओरसे/Assessee by : Shri Rajendra Singhal, AR

राजस्व की ओर से/Revenue by : Shri Dheeraj Kumar Gupta, Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 08/07/2024

घोषणाकीतारीख/Date of Pronouncement :30/08/2024

आदेश/ORDER

PER DINESH MOHAN SINHA, JM:

Captioned appeal filed by the assessee for Assessment Year (AY) 2018-19 is directed against the order passed by the National Faceless Appeal Centre, (in short 'the NFAC/Ld.CIT(A)'), Delhi dated 21.02.2023 under section 250 of the Income Tax Act, 1961 (in short, 'the Act') which in turn arise out assessment order passed by Centralized Processing Centre, Bengaluru u/s 143(1) of the Act on 29.06.2019.

2. The Grounds of appeal raised by the assessee are as follows:

“1. The order of the learned Commissioner of Income Tax (Appeals) is bad in law as well as facts.

2. The Ld. Commissioner of Income Tax (Appeals) erred on facts as well as in law by denying condonation of delay in filing the appeal.

3. The Ld. Commissioner of Income Tax (Appeals) erred on facts as well as in law in not considering that delay in filing of the appeal before the ld.CIT(A) was caused by reasonable cause.

4. The Ld. Commissioner of Income Tax (Appeals) erred on facts as well as in not deciding the appeal on merits.

5. The Ld. Commissioner of Income Tax (Appeals) erred on facts as well as in law in confirming adjustment in intimation; made only on technical ground as there was mere clerical mistake in filing the return of income.

6. The Ld. Commissioner of Income tax (Appeals) erred on facts as well as in law in confirming adjustment in intimation; made only on technical ground though full and true facts were available at the time of processing the return of income.”

3. At the outset, we note that there is delay in filing the appeal before Ld.CIT(A) of 892 days, the Ld.CIT(A) has observed as follows:

“15.0 In the present case, the appellant as not adduced any reasonable cause which prevented it from filing the within the 30 days' time limit and there is inordinate in filing of appeal as pointed out in para 5.0 above. It is also pertinent to note here that appellant has not submitted any written submission in response to several notices issued u/s 250 of the Act. This is also goes on to show that appellant is very casual in dealing with the taxation matters and statutory notices. Unless and until it is demonstrated that there was sufficient cause that prevented the appellant from exercising its legal remedy of filing appeal within that prescribed period of 30 days, the delay thereafter cannot be condoned without there being compelling grounds as advocated by the Hon'ble Courts. /

16.0 From the facts of the case, it is clear that the statutory right to appeal which was vested with the appellant was not exercised within the stipulated time u/s.249(2). Thus, this clearly is a case of laches and is directly the result of deliberate inaction on the part of the appellant.

17.0 This is not a case of change in law which is beneficial to the appellant and hence the delay in seeking such remedy may be condoned in the furtherance of

substantial justice. Therefore, there is no denial or destruction of a statutory right in this case, by adhering to the prescribed period of limitation as otherwise it will only lead to protract the matter endlessly and will undoubtedly render the legislative scheme and intention behind the concerned provision otiose as held by the Hon'ble Supreme Court in the case of Assistant Commissioner (CT) LTD, Kakinada & Ors. v. M/s Glaxo Smith Kline Consumer Health Care Limited 2020 [36] G.S.T.L. 305.

18.0 The Hon'ble Mumbai Tribunal in the case of Prashant Projects Ltd. vs. DCIT (2013) 37 taxmann.com 137 has held that by adopting a liberal view in condoning delay is one of the guiding principles in the realm of belated appeals, but liberal approach cannot be equated with a license to file appeals at will-disregarding the time-limits fixed by the Statutes. The behavior of the assessee could be termed as personified in action and negligence which would not constitute reasonable cause.

19.0 Further, Hon'ble Apex Court in the case of Vedabai Alias Vaijyanatabai Baburao Patil Vs. Shantaram Baburao Patil, 253 ITR 798, it was held as follows:-

"In exercising discretion under section 5 of the Limitation Act, the Court should adopt a pragmatic approach. 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 case deserves a liberal approach."

20.0 Further, ITAT, Chennai in the case of JCIT vs. Tractors & Farm Equipments Ltd. it was held as under:

"The delay cannot be condoned simply because the appellant's case is hard and calls for sympathy or merely out of benevolence to the party seeking relief. In granting the indulgence and condoning the delay it must be proved beyond the shadow of doubt that the appellant was diligent and was not guilty of negligence whatsoever. The sufficient cause within the contemplation of the limitation provision must be e-cause which is beyond the control of the party invoking the aid of the provisions. The Hon'ble Supreme Court in the case of Ramlal v. Rewa Coalfields Ltd. AR 1962 SC 361 has held that the cause for the delay in filing the appeal which by due care and attention could have been avoid cannot be a sufficient cause within the meaning of the limitation provision. Where no negligence, nor inaction, or want of bona fides can be imputed to the appellant a liberal construction of the provisions has to be made in order to advance substantial justice. Seekers of justice must come with clear hands."

21.0 For these reasons, the claim of the appellant is not acceptable especially when there is an inordinate delay of 892 days. Therefore, the delay of 892 days in A.Y. 2018-19 in filing of appeal in this case is not condoned as no "sufficient

cause" has been shown u/s. 249(3) of the Income Tax Act, 1961 for the appellant's failure to file the appeal within the prescribed period of limitation u/s.249(2) of the Income Tax Act, 1961 r.w.s. 5 of Limitation Act and hence the appeal sought to be instituted belatedly is hereby rejected.

22.0 In the result, as delay in filing of appeal is not condoned, the appeals are rejected accordingly.

23. Since delay in filing of appeal is not condoned and application for delay condonation is rejected, the case is not decided on merits.

24. In result, the appeal of the appellant is dismissed.”

4. Aggrieved by the order of Ld.CIT(A), the assessee has filed present appeal before the Tribunal.

5. The Ld.AR of the assessee filed an affidavit stating the reasons of delay in filing the present appeal, which is reproduced below:

Affidavit of Jayeshkumar K. Vadukiya aged about 48 years, residing at B-2,301Suvarnbhumi Apartment, Near Speedwell Party Plot, Kalawad Road, Ambika Township, Rajkot, do hereby solemnly affirm and state on oath that I am fully conversant of the facts deposed below:

- i. That I am a partner of the above named firm M/s. Newage Construction Equipment Engineering Co. PAN AAJFN0324M. Our firm is maintaining books of accounts regularly and getting them audited as per sec. 44AB of the Act.
- ii. That we, the partners are not conversant with the tax laws and procedure as well as the computer. Hence tax compliance is being made through our accountant and tax consultants.
- iii. That our firm was got registered by our earlier accountant on the e-portal of the Department, who had given his own mobile number and email Ids also in the contact details.
- iv. That all the communications as received from the Department on our SMS or email I'd were intimated by us to the accountant and we the partners, were under good impression that the accountant is taking necessary care of tax compliances.

- v. That for the AY 2018-19 under consideration also, we had maintained our books of accounts regularly and got them audited in prescribed manner. On 27.10.2018, the return of income along with the audit report was furnished in prescribed time and manner.
- vi. That for the AY 2018-19, the CPC had issued an intimation u/s. 143(1) of the Act on 29.06.2019, which we had intimated to the accountant. He neither intimated us that there was an adjustment u/s. 143(1) of the Act nor he suggested any remedial action,
- vii. That as and when we inquired with the accountant about refund, he was telling that we have to make an application for refund,
- viii. That we did not receive the intimation u/s. 143(1) of the Act in physical form, hence, we the partners were not aware that there was an adjustment u/s. 143(1) of the Act, resulting into demand,
- ix. That at the relevant time the refunds were generally issued after passing of substantial time as well as there was global spread of Corona Pandemic in the year 2020 and 2021, we were under good impression that we would get the refund claimed in due course.
- x. That even after lapse of substantial time, when we did not receive the refund, we inquired with our Chartered Accountant, to find the reason for delayed refunds. After verification, he informed that there was adjustment in intimation dated 29.06.2019 issued u/s. 143(1) of the Act, resulting into demand.
- xi. That on being asked, the accountant had stated that he is filing a rectification application u/s. 154 of the Act, for which ample time was available.
- xii. That the CA had intimated us that the adjustment was made in the intimation issued u/s. 143(1) of the Act. due to wrong entry made in the return of income filed by the accountant,
- xiii. That as advised by the CA, we had filed appeal before the Ld. CIT(Appeals) on 07.01.2022 against the intimation passed. Thus the appeal before the Id. CIT(Appeals) was filed late by 892 days,

- xiv. That in the statement of facts filed along with the first appeal, we had given all the facts related to the reason for delay in filing of appeal as well as facts related to the merits.
- xv. That however, the Id, CIT(Appeals) did not condone the delay in filing of appeal and has rejected the appeal without considering the appeal in merits,
- xvi. That there was no mala fide intention on our part in filing the appeal before the Ld.CIT(Appeals).
- xvii. That by late filing of the appeal, our firm did not gain nor the Department has lost a single penny,
- xviii. That our firm as well we partners are making payment of substantial tax on the profit earned by the firm.
- xix. That there is no habitual default in making compliance to the law. Due to the technical default in form of delayed appeal, which occurred for reasonable cause, our firm is facing genuine hardship.
- xx. Your honour's I, on behalf of all the partners, do hereby request your Honour's to kindly consider the matter with sympathy in light of the aforesaid facts and circumstances, and condone delay in filing of the first appeal.
- xxi. That we had no intention to jeopardize interest of the revenue by delaying the filing of the appeal.”

5.1 The Ld. AR of the assessee stated that non-appearance before Ld.CIT(A) is that notices were not served upon the assessee. As per record, three notices had been issued on 13.01.2023, 23.01.2023 and 12.02.2023 respectively. The Ld. AR of the assessee fairly made a request that one more opportunity should be granted to assessee to explain the case before Ld.CIT(A) afresh in accordance with law.

6. On the other hand, Id. Sr-D.R. heavily relied on the order of Ld.CIT(A) whereby opportunities were given to the assessee for hearings of the case and to submit documents which were not availed by assessee and all the notices remained unattended by the assessee and Ld.CIT(A) has rightly dismissed the appeal of the assessee.

7. We have heard both the parties and perused the documents available on record. In view of the instant case, we observe that matter is not legally adjudicated by the Ld.CIT(A) on merit. That according to the order dated 21.02.2023 of the Ld.CIT(A) has issued three notices for hearing on different dates but there was no response to notices by the assessee. We find that assessment was completed under section 143(1) of the Act by CPC on 29.06.2019. However, appeal was filed before Ld.CIT(A) on 07.01.2022, thus, there was delay of 892 days. However, the Ld.CIT(A) has relied on various case law regarding on the plea of condoning the delay. Considering the fact that assessee stated in the application for condonation of delay that regarding refund of tax there was an adjustment and order u/s 143(1) of the Act resulting into demand of tax and due to Covid-19 pandemic in the year 2020 and 2021 assessee was in good impression that assessee will get the refund claimed in due course. That even after lapse of substantial time, CA of assessee to find out the reason for delayed refunds found of Rs.8,52,500/-. In column No.20 of Schedule DPM a sum of Rs.(-) Rs.8,52,500/- was mentioned by mistake by the Accountant, who filed the return of the income of the assessee. The mistake gave the impression “that the relevant block of asset ceased to be inexistence.” An application for rectification u/s 154 of the Act was to be filed but that due to one reason of other recourse of

rectification of mistake was not taken by the assessee. On notice this fact, the assessee immediately filed an appeal on 07.01.2022 before Ld.CIT(A). Thus, considering the peculiar facts and circumstances of the case, we find that there was reasonable cause for not filing appeal in time before Ld.CIT(A). Hence, the delay in filling appeal before Ld.CIT(A) is hereby condoned. Therefore, keeping in view the principle of natural justice, the issue raised by assessee in the present appeal back to the file of Assessing Officer to decide the issue afresh in accordance with law. Needless to direct that the Assessing Officer shall pass order after giving fair and reasonable opportunity to assessee. The assessee is also directed to be more vigilant in future in making compliance in time and not to seek further adjournment without any valid reason and furnish all relevant and necessary evidences if so desire. With these directions the appeal of assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 30-08 -2024

Sd/-
(A. L. SAINI)
ACCOUNTANT MEMBER

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Rajkot
Dated: 30/08/2024
Dkp Outsourcing Sr.PS

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Rajkot
6. Guard file.

// True Copy //

By order/आदेश से,

Assistant Registrar
ITAT, Rajkot