

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC - A” BENCH : BANGALORE**

BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT

ITA No.1314/Bang/2024
Assessment Year : 2016-17

Shri. Gandhinagara Narayana Harikrishna Rai, No.3907, Panchavati, 12 th Main, Kumarswamy Layout, Bengaluru – 560 078. PAN : ABJPH 8664 D	Vs.	ITO, Ward – 5(3)(2), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Pranav Krishna, Advocate
Revenue by	:	Shri. Ganesh R. Gale, Standing Counsel for Department.

Date of hearing	:	13.08.2024
Date of Pronouncement	:	13.08.2024

ORDER

Per George George K, Vice President:

This appeal at the instance of the assessee is directed against the Order of Addl/JCIT(A) dated 31.05.2024, passed under section 250 of the Income Tax Act, 1961 (hereinafter called ‘the Act’). The relevant Assessment Year is 2016-17.

2. At the very outset, I notice that Addl/JCIT(A) has dismissed this appeal *in limine* without adjudicating the issues on merits by not condoning the delay of 356 days in filing the appeal before him. The learned AR submitted that assessee had filed a delay condonation application which was not properly appreciated by the Addl/JCIT(A). It was submitted by the learned AR that Assessment Order was passed under section 143(3) r.w.s. 147 of the Act on 12.12.2019. It was stated that assessee was uncertain about the date of receipt of the said Assessment Order. Therefore, taking into account the date of the Assessment Order passed under

section 143(3) r.w.s. 147 of the Act, appeal ought to have been filed on or before 11.01.2020. However, in the instant case, appeal has been filed only on 20.12.2022. It was further submitted by the learned AR that excluding the period of covid pandemic as per the Hon'ble Apex Court judgment in MA No.665/2021 in *suo moto* WP No.3/2020 (judgment dated 10.01.2022), the appeal is delayed by 359 days. It was submitted that after the Assessment Order was passed, assessee had sought the advice of his tax consultant who advised to accept the Assessment Order. Accordingly assessee did not pursue the appeal. Thereafter, the penalty under section 271(1)(C) of the Act was imposed on the assessee on 17.02.2022 and appeal from the penalty order was dismissed and penalty amounting to Rs.4,28,892/- was confirmed by the appellate order dated 11.10.2022. It was stated that immediately after the receipt of the Order of the CIT(A) confirming the imposition of penalty, assessee approached his tax consultant, who suggested to approach the present counsel for further guidance on the issue as he was not familiar with the appellate procedure before the Tribunal. Thereafter, the assessee approached the present counsel for professional advice who suggested for filing the appeal before the Tribunal against the CIT(A)'s Order confirming the imposition of penalty dated 11.10.2022 and also advised the assessee to prefer an appeal against the Assessment Order 12.12.2019 before CIT(A). Immediately thereafter the assessee filed an appeal before the First Appellate Authority (FAA) with a delay of 359 days (after excluding the covid pandemic period). It was stated by the learned AR that FAA without properly appreciating the above contention raised has dismissed the appeal of the assessee *inter alia* without condoning the delay of 356 days. The learned AR in conclusion stated that he wants the matter to be kept alive since the assessee intends to settle the matter under the VSV Scheme, 2024.

3. The learned Standing Counsel supported the Order of the CIT(A).

4. I have heard the rival submissions and perused the material on record. In the instant case, the Assessment Order was passed on 12.12.2019. Taking the date of Assessment Order, the appeal ought to have been filed on 11.01.2020. However, the appeal has been filed only on 20.12.2022. Taking into account the exclusion of the covid period, there is a delay of 359 days in filing the appeal before the FAA. I find that initially assessee had accepted the Assessment Order. However, on receipt of the penalty order passed under section 271(1)(C) of the Act and further the appellate order confirming the imposition of penalty, assessee sought professional advice from the present Counsel who had suggested for filing an appeal against the Assessment Order before the Addl/JCIT(A).

5. The Hon'ble Bombay High Court in the case of Anatek Services Pvt. Ltd., Vs. ACIT in ITA No.102 of 2018 (Order dated 11.02.2022) had condoned the delay of 8 to 9 years in filing the appeals before the CIT(A). The facts considered by the Hon'ble Bombay High Court was that assessee had initially accepted the penalties imposed under section 271(1)(C) of the Act. But after a lapse of 8 years, sometime in the year 2013, the Revenue had directed the assessee to show cause as to why prosecution should not be initiated. On receipt of the prosecution notice, assessee filed an appeal as against the order imposing penalty under section 271(1)(C) of the Act before the FAA with a delay of 8 to 9 years. The Hon'ble High Court on facts of the said case, condoned the delay of 8 to 9 years. The relevant observation of the Hon'ble Bombay High Court reads as follows:

“2. Appellant has received three penalty orders for the three assessee, years as mentioned earlier. It is appellant's case that to buy peace and put an end to the dispute, they paid the penalty amount as well. That is not disputed. One fine day, almost 8 years later, sometime in 2013, appellant received a notice calling upon to show cause as to why prosecution should not be initiated against appellant. Surprised with the turn of events, appellant decided to challenge the penalty orders. The challenge was rejected by CIT(A) saying that the appeals have been filed with much delay.

CIT(A) overlooked one factor that the prosecution itself has been launched 8 or 9 years after the penalty amount was paid by appellant. If the department feels that they can do this after 8 or 9 years delay, in our view, they must apply the same yardsticks for an assessee.

3. *In the circumstances, we condone the delay in filing the appeals. The order of the ITAT pronounced on 7th April 2017, is hereby quashed and set aside. The order of CIT(A) dated 14th August 2014 rejecting the appeals also is quashed and set aside. The CIT(A) is directed to consider the appeals filed by appellant in accordance with law and dispose the same within 12 weeks from the date of this order is uploaded. Appellant will forward a copy of the appeals filed alongwith the copy of this order to CIT(A) within one week of this order being uploaded. The CIT(A) shall grant a personal hearing to appellant and intimate date and time of personal hearing at least 7 days in advance. If respondent wishes to rely on any judgment or order passed by any Court or Tribunal, he shall provide a copy thereof to appellant and give them an opportunity to deal with those judgments or distinguish those judgments and those submissions of appellant shall also be dealt with in the assessment order.”*

6. In the instant case, assessee has filed appeal before the FAA within a reasonable period from the date of the appellate order confirming the imposition of penalty of Rs.4,28,892/- (appellate order imposing penalty is dated 11.10.2022 and the appeal has been filed before CIT(A) on 20.12.2022). Moreover, the assessee wants to keep the issue alive since he wants to settle the matter under VSV Scheme, 2024. Taking into account the totality of facts of the instant case, I condone the delay of 359 days and restore the matter to the CIT(A) to decide the issue on merits. It is ordered accordingly.

7. In the result, appeal filed by the assessee is allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(GEORGE GEORGE K)
Vice President

Bangalore.

Dated: 13.08.2024.

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| 1. Appellants | 2. Respondent |
| 3. DRP | 4. CIT |
| 5. CIT(A) | 6. DR, ITAT, Bangalore. |
| 7. Guard file | |

By order

Assistant Registrar,
ITAT, Bangalore.