

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCH, 'SMC', CHANDIGARH

SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.695/CHD/2023

निर्धारण वर्ष / Assessment Year :2012-13

Shri Jagdish Singh, Street No.6,Defence Colony, Village Alohnan Kalan, Nabha	Vs. बनाम	The ITO, Ward, Nabha
स्थायीलेखासं./PAN No: BCYPS1417C		
अपीलार्थी/APPELLANT		प्रत्यर्थी/RESPONDENT

(PHYSICAL HEARING)

निर्धारिती की ओर से/Assessee by : Shri Tej Mohan Singh, Advocate

राजस्व की ओर से/ Revenue by : Shri Vivek Vardhan, JCIT Sr.DR

सुनवाई की तारीख/Date of Hearing : 03.10.2024

उदघोषणा की तारीख/Date of Pronouncement : 04.10.2024

आदेश/Order

The assessee is in appeal before the Tribunal against the order dt 18.10.2022 of ld. Commissioner of Income Tax(Appeals), National Faceless Appeal Centre (NFAC), Delhi.

2. At the outset, it is noted that the appeal is barred by limitation by 332 days. The Counsel of the Assessee brought to our notice of the Bench the condonation application as well as the Affidavit of Shri Jagdish Singh S/o Shri Dayal Singh

resident of Street No.6, Defence Colony, Almorah Kalah, Patiala wherein, the Assessee has explained the reasons attributable to late filing of appeal by 332 days. After hearing both the parties and perusing the material on record including the affidavit, I find that the delay in filing the appeal is purely for the reasons that the Assessee was not knowing about the ex-parte decision by CIT(A) dismissing the appeal in limine and it was only after on receipt of notice dated 9.11.2023 through ITO, Ward Nabha, the Assessee came to know about the appeal having been decided ex-parte.

3. Sub-section 5 of Section 253 contemplates that the Tribunal may admit an appeal or permit filing of memorandum of cross-objections after expiry of relevant period, if it is satisfied that there was a sufficient cause for not presenting it within that period. This expression sufficient cause employed in the section has also been used identically in sub-section 3 of section 249 of Income Tax Act, which provides powers to the Id. Commissioner to condone the delay in filing the appeal before the Commissioner. Similarly, it has been used in section 5 of Indian Limitation Act, 1963. Whenever interpretation and construction

of this expression has fallen for consideration before Hon'ble High Court as well as before the Hon'ble Supreme Court, then, Hon'ble Court were unanimous in their conclusion that this expression is to be used liberally. We may make reference to the following observations of the Hon'ble Supremecourt from the decision in the case of Collector Land Acquisition Vs. Mst. Katiji & Others, 1987 AIR 1353 wherein it has held that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

4. In the light of above, if we examine the facts of the present case, then it would reveal that there was a bonafide lapse at the end of the assessee because the assessee will not gain anything by making his appeal time barred. The delay in filing the appeal was not adopted as a strategy to litigate with the Revenue. Considering the bonafide mistake, we condone the delay and proceed to decide the appeal on merit.

5. After hearing the rival contentions and perusing the material available on record, I note that the proceedings before the authorities were ex- parte as the Assessee failed to appear before both the authorities. I note that the ex-parte decision by the CIT(A) has been made in violation of the provisions of section 250(6) of the Act which mandates that the CIT(A) shall decide the appeal in writing, considering the point of determination, his decision thereon and also reasons for the said decision. I also note that before the A.O. also, the order was ex-parte. Therefore, the ends of justice would be well served if the appeal is restored to the file of the Assessing Officer. Accordingly, I restore the appeal to the file of the Assessing Officer for adjudication afresh on merits.

6. In the result, the appeal is allowed for statistical purposes.

Order pronounced on 04.10.2024.

Sd/-
(RAJESH KUMAR)
Accountant Member

“आर.के.”

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent

3. आयकरआयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT,
CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar