IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH MUMBAI

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No. 3219/MUM/2024
Assessment Year: 2008-09

Alok Joshi, F-402, Windlass Residency, Curzone road, Dalanwala, Dehradun, Uttrakhand -248001 (PAN : ABXPJ1839N)	Vs.	Commissioner of Income Tax (Appeals), Mumbai
(Appellant)		**(Respondent)**

Present for:

Assessee : Ms. Kshipra Singhvi, CA
Revenue : Shri Manoj Kumar Sinha, Sr. DR

Date of Hearing : 07.08.2024
Date of Pronouncement : 28.10.2024

O R D E R

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A)-57, Mumbai, vide order no. ITBA/APL/S/250/2024-25/1065107268(1), dated 24.05.2024 passed against the assessment order by the Income Tax Officer-3(1), Mumbai, u/s. 143(3) of the Income-tax Act (hereinafter referred to as the "Act"), dated 22.06.2011 for Assessment Year 2008-09.

2. Grounds taken by the assessee are reproduced as under:

"1. Under the facts and circumstances of the case and in law, the Id. Commissioner of Income Tax (Appeals) 57, Mumbai (hereinafter 'Id. CIT(A)"), erred in considering the date of receipt of order u/s 271(1)(b) as 22.06.2011 instead of 21.04.2022 for the purpose of calculation period of limitation of 30 days for filing of appeal u/s 246A of the Income Tax Act, 1961 and hence erred in dismissing the appeal on the ground that appeal was filed by a delay of 3939 days after the limitation period.

2. Under the facts and circumstances of the case and in law, the Id. CIT(A) erred in not appreciating that the assessee made a written request to the AO on 20.12.2020 for supply of penalty order u/s 271(1)(b) and after much follow-up, the AO provided the penalty order to the assessee after a gap of one year and four months on 21.04.2022 and hence appeal filed on 05.05.2022 is within the limitation period.

3. Under the facts and circumstances of the case and in law, the Id. CIT(A) erred in not appreciating that the assessee left India on 23.04.2007 for purpose of employment abroad and subsequent to the impugned AY 2008-09 till AY 2011-22, no return of income was filed by him.

*4. Under the facts and circumstances of the case and in law, the ld. CIT(A)-57 erred in confirming penalty of Rs.50,000/- (Rs. 10,000*5) levied u/s 271(1)(b) of Income Tax Act, 1961, and the same merits to be deleted."*

3. Brief facts of the case are that assessee is a non-resident who filed his return on 14.07.2008 reporting total income at Rs.3,63,318/- under the status "Non-Resident". Ld. Assessing Officer issued notices u/s. 142(1) along with questionnaire with repeated reminders, however, no compliance was made which led to the assessment to be finalised ex parte based on information available on record to the best of the judgement u/s.144 of the Act. This also invited penalty proceedings u/s. 271(1)(b) of the Act for non-compliance to the notices issued by the ld. Assessing Officer. Assessment was thus completed at an assessed total income of Rs.11,93,068/- u/s. 144 of the Act along with initiation of penalty proceedings u/s. 271(1)(b).

3.1. In respect of the quantum matter relating to assessment u/s.144, assessee went in appeal before the ld. CIT(A), contesting on the additions/disallowances made in his hands which is pending for disposal. In this respect assessee has furnished Form No.35, dated

05.05.2022 along with grounds of appeal and statement of facts. In the said Form No.35, in point No.2 requiring details of the order of appeal against, assessee has stated the date of order as 30.12.2010 and against date of service of order / notice of demand, he has stated as 21.04.2022. In point No.14 in appeal filing details, against "Whether there is delay in filing appeal", assessee has stated 'No'. The address to which notices be sent to the assessee is stated as 1499, Sector 49 B, Pushpak society, Sector 44, Chandigarh.

3.2. Assessee contended that it worked with ONGC, Mumbai and in the course of employment, he stayed at rented accommodation at Flat No.5, Plot No.164, Sanskrit CHS Ltd., M.B. Raut Road, Shivaji Park, Mumbai. He left the job with ONGC on 22.04.2007, vacating the rented accommodation and left India on 23.04.2007 with his family for employment abroad. Subsequent to leaving India, he had no taxable income in India and thus returns were not filed subsequent to Assessment Year 2008-09. According to the assessee, since he along with his family had left India for the purpose of employment, notices issued by the ld. Assessing Officer could not be served on him which led to non-compliance as well as passing of the impugned assessment order u/s. 144.

3.3. The present appeal before us is in respect of imposition of penalty of Rs.50,000/- u/s. 271(1)(b), vide order dated 22.06.2011. In the said penalty proceedings, notices were issued by the ld. Assessing Officer, which could not be attended by the assessee owing to he and his family members not available in India. Thus, penalty of Rs.50,000/- (10,000 X 5) was imposed.

4. Aggrieved, assessee went in appeal before the ld. CIT(A) wherein he observed that the facts on record indicate that assessee left India for China on 23.04.2007 and returned to India on 18.09.2020. The assessee's profile was updated on income-tax e-portal on 16.12.2020. During the intervening period, assessee never informed the Income-tax Department of change of residential address. Various notices u/s.142(1) were issued on 02.08.2010, 16.08.2010, 08.09.2010 and 18.10.2010. The notice u/s.142(1) dated 08.09.2010 was served by way of affixture by the Ward Inspector on 22.09.2010. According to the ld. CIT(A), it is a settled principle of law that service of notice by affixture at the last known address provided by assessee to the Department is a valid notice. In the present case of the assessee, order u/s.271(1)(b) of the Act was passed on 22.06.2011. Assessee filed appeal against such order on 05.05.2020. Thus, there was a delay of 3939 days. It has resulted into inordinate delay of filing of appeal. The reasons given by assessee are not sufficient to condone the delay in filing the appeal before the CIT(A). According to him, assessee did not inform the department about the change of residential address. Assessee also did not update his profile in the Income-tax e-portal. There was complete lack of sense of responsibility towards tax laws in India by the assessee. Such casual and callous approach of assessee to file an appeal after inordinate delay of 3939 days could not be accepted, observed by the ld. CIT(A).

4.1. Ld. CIT(A), thus noted that there was not sufficient reason or cause to file the appeal with a delay of 3939 days, though the impugned order was passed on 22.06.2011. Accordingly, he dismissed the appeal by not condoning the stated delay. Aggrieved, assessee is in appeal before the Tribunal.

5. Before us, ld. Counsel for the assessee pointed out that though the impugned order was passed on 22.06.2011 but was never served on the assessee, since he had vacated the premise and had left India for the purpose of employment. Assessee returned to India on 18.08.2020 after the demise of his mother to take care of his ailing father and learnt about this substantial demand outstanding against his PAN. In this respect, assessee approached the ld. Assessing Officer for supply of assessment order and penalty order so as to enable to take appropriate actions. He made an application dated 22.12.2020 by speed post to the ld. Assessing Officer requesting for supply of assessment order, penalty order and other notices. The said letter is placed at page 8 and 9 of the paper book. An e-mail was also sent for the same on 22.12.2020, print out of which is placed at page 10, 11 and 12 of the paper book. Assessee followed up with the ld. Assessing Officer by sending a reminder e-mail on 04.02.2021. Since no response was coming up, he filed a grievance petition by an e-mail dated 03.04.2022 submitting that since no records about the case are available, the demand notices against the name of the assessee be removed. Subsequent to this, ld. Assessing Officer responded to the e-mail of the assessee vide his e-mail dated 21.04.2022, supplying a copy of assessment order passed u/s.144 and impugned penalty order passed u/s. 271(1)(b). Pursuant to this response, assessee filed appeal against the impugned penalty order on 05.05.2022 by mentioning the said dates in Form No.35. Assessee also followed up with the ld. Assessing Officer for supplying further documents in respect of report of inspector for service of notices/assessment order/penalty order by way of affixture.

6. In ground no.1, assessee has contended that the date of receipt of order u/s. 271(1)(b) is to be considered as 21.04.2022 for the

purpose of calculation of period of limitation of 30 days for filing of appeal before the ld. CIT(A) instead of taking the date as the date of order, which would result into no delay in filing the appeal. Ld. CIT(A) had observed that for the change in residential address, assessee did not inform the Department to take corrective action nor updated his profile on the Income-tax portal.

6.1. In the return filed for Assessment Year 2008-09, assessee had reported Nil income under the head "Income From House Property" by mentioning address of the self-owned house property with address at "23/A, Ravindra Nath Tagore Marg, Hathi Barkala, Dehradun" with its status as vacant. Assessee thus, claims that address at Dehradun was reported in the return filed by the assessee and no notices were sent on this self owned house of the assessee, details of which were available in the return. Notices were sent by the ld. Assessing Officer only at the rented premises in Mumbai, which he had vacated and left India for the purpose of employment.

6.2. Further, assessee contended that in the appeal proceedings against the quantum assessment, additional evidences were placed on record for which ld. CIT(A) had called for remand report from the ld. Assessing Officer which suggests that, appeal of the assessee has been admitted for adjudication against the assessment order. On these stated facts and circumstances in the case, assessee prays for condonation of delay since there is no intentional or deliberate attempt on his part in filing the appeal belatedly. According to him, explanation so furnished corroborated by documentary evidences are bonafide. Assessee had made persistent effort to get the relevant documents from the ld. Assessing Officer for filing the appeal and immediate action was taken on the receipt of the same.

7. We have considered the facts in the case and perused the material on record. The facts stated above are undisputed. There is a delay of 3939 days in filing the appeal by the assessee before the ld. CIT(A) which has not been condoned and the first appeal has been dismissed on account of this delay.

8. To address the issue in hand before us, we need to delve into the understanding of the expression “sufficient cause”. Sub-section 3 of Section 249 contemplates that the CIT(A) may admit an appeal after expiry of relevant period, if he is satisfied that there was a “sufficient cause” for not presenting it within that period. 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.

8.1. We may make reference to the following observations of the Hon'ble Supreme Court from the decision in the case of *Collector Land Acquisition Vs. Mst. Katiji & Others, 1987 AIR 1353:*

> *"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
>
> *2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*
>
> *3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*
>
> *4. 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.*

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

8.2. Similarly, we would like to make reference to authoritative pronouncement of Hon'ble Supreme Court in the case of *N.Balakrishnan Vs. M. Krishnamurthy (supra).* It reads as under:

"Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be putt to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi lain Vs. Kuntal Kumari [AIR 1969 SC 575] and State of West Bengal Vs. The Administrator, Howrah Municipality [AIR 1972 SC 749]. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Could should not forget the opposite party altogether. It must be borne in mind that he is a looser and he too would have incurred quiet a large litigation expenses. It would be a salutary guideline that when courts condone the

delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."

8.3. We do not deem it necessary to re-cite or recapitulate the proposition laid down in other decisions. It is suffice to say that the Hon'ble Courts are unanimous in their approach to propound that whenever the reasons assigned by an applicant for explaining the delay, then such reasons are to be construed with a justice oriented approach.

8.4. In light of the above, if we examine the facts then it would reveal that there is a delay of 3939 days in filing of the first appeal by the assessee before the ld. CIT(A). In its submissions before the ld. CIT(A), assessee has explained the reasons which prevented him in filing the appeal withing the prescribed limitation. Therefore, for the just decision of the controversy, it is incumbent upon us to condone the delay. Considering the said explanation of the assessee, we condone the same.

8.5 The penalty imposed is on account of failure on the part of the assessee to comply with five notices issued by the ld. Assessing Officer. Thus, a penalty Rs.10,000/- for each of the notices has been imposed, totalling to Rs.50,000/-. The non compliance by the assessee has been explained in the facts stated above which led to the passing of assessment order u/s. 144 of the Act against which he is in appeal before the ld. CIT(A), pending for disposal. Accordingly, we restrict the penalty to Rs.10,000/- and delete the balance amount so imposed by the ld. Assessing Officer. Accordingly, grounds taken by the assessee in this respect are partly allowed.

9. In the result, appeal of the assessee is partly allowed.

Order is pronounced in the open court on 28 October, 2024

Sd/-	Sd/-
(Pavan Kumar Gadale)	(Girish Agrawal)
Judicial Member	Accountant Member

Dated: 28 October, 2024

MP, Sr.P.S.

Copy to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai