

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH MUMBAI
BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA Nos. 3774 and 3772/MUM/2024
Assessment Year: 2017-18

Kirit Parasmal Jain, 73, Mathar Pakhadi Road, Mazgaon, Mumbai – 400 010 (PAN : AACPJ5579K) (Appellant)	Vs.	Income Tax Officer – 24(3)(1), Mumbai (Respondent)
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Present for:

Assessee : Shri Vikram Mehta, CA
Revenue : Shri P.D. Chougule, Sr. DR

Date of Hearing : 10.09.2024
Date of Pronouncement : 30.10.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

These two appeals filed by the assessee are against the orders of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2024-25/1066012224(1), dated 25.06.2024 passed against the assessment order and the penalty order passed by the Assessment Unit, Income Tax Department, u/s. 147 r.w.s. 144 of the Income-tax Act (hereinafter referred to as the “Act”), dated 31.05.2023 and u/s. 270A of the Act, dated 04.01.2024, respectively. for Assessment Year 2017-18.

2. Grounds taken by the assessee in ITA No.3774/Mum/2024 are reproduced as under:

1. *The Learned Assessing Officer erred in assessing the income at Rs 1,11,59,360/- instead of returned income at Rs 3,98,360/- as represented by the assessee.*
2. *The Learned Assessing Officer erred in making an addition u/s 56(2)(vii) of 1,07,61,000/- based on surmises and conjectures and without waiting for the departmental valuation officer's report.*
3. *The Learned Assessing Officer erred in making an addition u/s 56(2)(vii) without appreciating the fact that the property was booked in the year 2014 and payment of Rs 15,00,000/- was made vide Cheque No. 227574 on 12.12.2014 and therefore the proviso to section 50C is applicable in the case of the assessee.*
4. *The Learned Assessing Officer failed to rectify the order u/s 147 r.w.s. 144 in spite of the Departmental Valuation Officer on 12.10.2023.*
5. *The Learned Departmental Valuation Officer and the Learned Assessing Officer erred in preparing the valuation report as on 16.09.2016 (being the registration date) though the part consideration and agreement for the said property was made on 12.12.2014 and thus proviso to Section 50C is applicable and valuation should have been done as on 12.12.2014.*
6. *Without prejudice to the above grounds of appeal, the Learned Assessing Officer erred in not restricting the addition to the amount assessed by the Departmental Valuation Officer.*

2.1. Grounds taken by the assessee in ITA No. 3772/Mum/2024 are reproduced as under:

1. *The Learned Assessing Officer and CIT(A) erred in levying penalty u/s 270A of 18,74,030/- for under reporting of income.*
2. *The Learned Assessing Officer and CIT(A) erred in levying penalty u/s 270A for under reporting of income ignoring that no penalty was leviable as per 270A(6)(b) as valuation was an estimate and therefore the question of levying penalty does not arise.*
3. *The Learned Assessing Officer and CIT(A) erred in levying u/s 270A for under reporting of income ignoring that no penalty was leviable as per 270A(6)(b) as valuation was an estimate ignoring the judgment of Hon'ble Pune ITAT in the case of Jaibalaji Business Corporation Private Limited vs ACIT ITA No. 840/Pune/2022.*
4. *Without prejudice to the above grounds of appeal, the Learned Assessing Officer and CIT(A) erred in levying penalty on the entire amount of addition made of Rs 1,07,61,000/- ignoring the departmental valuation report.*
5. *The learned CIT(A) erred in disposing the grounds of appeal in summary manner without application of mind and considering the individual grounds raised.*

6. The assessee craves leaves to add, alter, amend and delete any of the above grounds of appeal.

3. Brief facts of the case are that assessee filed his return of income on 28.07.2017 reporting total income at Rs.3,41,360/- which was revised on 25.01.2019 with revised total income at Rs.3,98,360/-. Issue involved in the case is in respect of transaction of purchase of property entered into by the assessee for an amount of Rs.1,80,00,000/- which is less than the stamp duty value of Rs.2,87,61,000/-. The difference in the two attracts provisions of section 56(2) for which proceedings u/s.148 were initiated by alleging that income of Rs.1,07,61,000/- escaped assessment. Assessee in the course of assessment had furnished details relating to the transaction and justified that no addition is called for, summary of which is reproduced in the assessment order itself. Reference to Department Valuation Officer (DVO) was made by the ld. Assessing Officer, for which the valuation report remained pending until the completion of assessment and passing of the impugned assessment order. Pending report from ld. DVO, ld. Assessing Officer passed the assessment order by noting that it shall be open to the assessee to seek rectification of the order in light of report of ld. DVO. Subject to this, assessment was completed by making an addition of Rs.1,07,61,000/- towards difference between stamp duty valuation and actual consideration u/s.56(2)(vii). Aggrieved, assessee went in appeal before the ld. CIT(A).

4. There was a delay of 204 days in filing the said appeal before the ld.CIT(A). Ld. CIT(A)(A) noted that impugned assessment order was passed on 31.05.2023 which according to the details furnished in form 35 was served on the same date. Appeal filing was due on or before 30.06.2023. However, it was filed on 24.01.2024. In this respect

assessee had furnished an application for condonation of delay, contents of which are reproduced in the order of ld. CIT(A). The said application was rejected and appeal was dismissed on account of being filed beyond the period prescribed under the Act, without adjudicating on the merits of the case. Aggrieved, assessee is in appeal before the Tribunal.

5. Before us, ld. Counsel for the assessee has placed on record a paper book containing additional evidences which includes affidavits of the assessee and authorised representative to whom filing of appeal was entrusted. From these documents it was submitted that assessee had suffered a major heart problem just before the passing of the order and was bed ridden for two months. Assessee had entrusted the filing of appeal to his authorised representative where the miss happened owing to failure on the part of the employee of the authorised representative. To this effect, an affidavit from the authorised representative, explaining the details is also placed on record.

5.1. We further note that impugned assessment was completed, pending report from the ld. DVO and was subjected to rectification by taking into consideration valuation report as and when it is received by the ld. Assessing Officer. Report from ld. DVO, dated 12.10.2023 is placed on record which is received subsequent to the passing of assessment order.

6. 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.

6.1. 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."*

6.2. 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 Court 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."*

6.3. 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.

6.4. In light of the above, if we examine the facts then it would reveal that there is a delay of 204 days in filing of the first appeal by the assessee before the Id. CIT(A). In its submissions before the Id. 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.

7. Considering the above stated facts and submissions, we find it appropriate to condone the delay of 204 days which occurred while filing the appeal before the ld. CIT(A). Since ld. CIT(A) has not dealt with the merits of the case, more importantly the valuation report received subsequently which needs to be taken into consideration, we remit the matter back to the file of ld. CIT(A) for meritorious adjudication on the grounds of the appeal taken at the first appellate stage. We also direct the assessee to be diligent and cooperative in attending the hearings and make his submissions for expeditious and effective disposal of the appeal. He should not seek adjournments unless warranted by compelling reasons.

7.1. Since the matter is restored to the file of Ld. CIT(A) for meritorious adjudication by passing a speaking order in terms of our observations made hereinabove, we are not expressing any views on the merits of the case so as to limit the appellate procedure before the Ld. CIT(A). The observations herein made by us in remanding the matter back to the file of Ld. CIT(A) will not impair or injure the case of the Revenue nor will it cause any prejudice to the defense/explanation of the assessee.

8. Accordingly, grounds taken by the assessee in ITA No.3774/Mum/2024 are allowed for statistical purposes.

9. Appeal in ITA No.3772/Mum/2024 is in respect of penalty, since the quantum matter has been set aside to the file of ld. CIT(A), the penalty so levied is premature and therefore is also set aside to the file of ld. CIT(A).

10. In the result, both the appeals by assessee are allowed for statistical purposes.

Order is pronounced in the open court on 30 October, 2024

Sd/-
(Narender Kumar Choudhry)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 30 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