

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "E" Bench, Mumbai.

Before Shri Narender Kumar Choudhry (JM)
& Shri Omkareshwar Chidara (AM)

I.T.A. No. 4504/Mum/2024 (A.Y. 2015-16)

Tulshiram Hanumant Bhoi G.398, RBI Staff Colony Mumbai Central, H.O. Mumbai-400 008. PAN : AHQPB7524H (Appellant)	Vs.	DCIT, Circle 42(3)(1) Kautilya Bhavan BKC, Bandra Mumbai-400051. (Respondent)
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Assessee by	Shri Gajendra Golchha
Department by	Shri Praveen Shrivastava
Date of Hearing	10.10.2024
Date of Pronouncement	11.11.2024

ORDER

Per Omkareshwar Chidara (AM) :-

In the above cited appeal, the appellant is a class III employee of RBI who claimed that he does not know any Rules of Income Tax and hence depended on the Income Tax Practitioner Mr. Vijay Sawant to file his Return of Income. He claimed that all salary particulars were given to the Income Tax Practitioner who filed his Return of Income electronically and according to the computation made by the IT Practitioner, the appellant got some refund. The facts gathered from the assessment order/penalty order/appeal order on penalty of learned Commissioner of Income Tax (Appeals)[the Ld. CIT(A) for short], are that the appellant wrongly calculated house rent allowance provisions and got a refund. It is also observed from the orders of the lower authorities that when the mistake of computation was pointed out by the Department, the appellant immediately rectified the mistake and paid the tax relevant to wrong claim of HRA/deductions under Chapter VIA. The

total excess claims made by the appellant comes to Rs. 1,97,548/- under Chapter VIA as per the Department and when it was pointed out, the appellant paid the relevant tax and interest as per Income Tax Act.

2. Subsequently, the Revenue levied penalty of Rs. 16,587/- being 100% of tax sought to be evaded. The learned Assessing Officer (Ld. AO for short) gave three opportunities to the appellant asking him as to why penalty should not be levied and there is no response from him. Hence, the Ld. AO levied a minimum penalty as mentioned above.

3. Aggrieved by the penalty order of the Ld. AO, an appeal was instituted before the Ld. CIT(A) with a delay of 390 days. The Ld. CIT(A) dismissed the appeal of appellant by adjudicating that the delay in filing appeal is not condoned as there is inaction or negligence on the part of the appellant. It was adjudicated further that the appellant compromised in giving his login details to others. Hence, the Ld. CIT(A) dismissed the penalty appeal of appellant.

4. Aggrieved by the dismissal order of the Ld. CIT(A), the appellant filed an appeal before the ITAT with two grounds – the delay in filing of appeal should be condoned as there is a bonafide belief of not getting a copy of the appeal order of the Ld. CIT(A) and second ground taken before the Ld. CIT(A) is the penalty levied may be deleted.

5. The Ld. AR of the appellant has pleaded for lenience and mercy as the appellant is a small employee and does not know the intricacies of Income Tax Act and the work of filing of return was entrusted an IT Practitioner on whom appellant placed reliance. Moreover, when the mistake was pointed out to him by the Department, the resultant tax and interest were already paid by him. The penalty order was not received by appellant physically and immediately after receiving it, an appeal was filed before the Ld. CIT(A) with

sufficient reason and prayer to condone the delay and delete the penalty. But, the Ld. CIT(A) has not condoned the delay and dismissed the appellant's appeal on the ground of delay without adjudicating on merits. Hence, the Ld. AR of appellant prayed for relief on the count of delay and deletion of penalty.

6. Ld. DR has pointed out that the appellant rectified the mistake only after Department intimated him and hence penalty should be levied.

7. Heard both sides. After hearing both sides and perusing the orders of the lower authorities, it is decided to condone the delay and delete the penalty. The delay is condoned for the following reasons :

- a) The appellant is a small employee and does not know the intricacies of Income Tax Act.
- b) The appellant has given all particulars to his Income Tax Practitioner and relied on him but the IT Practitioner has not informed him about the levy of penalty. As the Income Tax Act is complicated and the newly introduced Faceless regime, the login particulars were shared with the IT Practitioner and he has not informed the appellant. Soon after the appellant came to know the proceedings, and appeal was filed by the appellant before the Ld. CIT(A) and the Bench agrees with the submission and prayer of the Ld. AR of appellant that the appellant does not gain anything.
- c) Reliance was placed on the decision of Hon'ble Bombay High Court with respect to condonation of delay by the Ld. AR of the appellant. In the case of Pavan Kumar Nath Vs. Yashita Mukhi, Hon'ble Bombay High Court has considered and condoned the delay of 1916 days in filing appeal against a judgment. In this case, Hon'ble Bombay High Court held that the plea of notice of appellant was not served on him was not satisfactorily adjudicated by the lower authorities by passing ex-parte order and where there is a bonafide intention on the part of the appellant while filing appeal with delay, the same should be

condoned. The Hon'ble Bombay High Court has further held that the decision to condone the delay depends on the specific circumstances of each case and while giving relief to the appellant, reliance was placed on the decision of Hon'ble Apex Court in the case of N.Mohan V. Madhan.

8. The penalty levied is deleted for the following reasons :-
- a) The appellant is a class III employee of a bank and his salary is just above the threshold limits.
 - b) Even though, ignorance of law is not an excuse, the axiom has to be taken with a pinch of salt as far the Income Tax Act is concerned, it is very complicated and normal persons are not expected to know the intricacies of law. Moreover, the appellant gave his salary particulars to an IT practitioner who is well-versed with law and he relied on an expert while filing return of income.
 - c) Soon after the appellant was informed about the mistake in computation of certain deductions, the appellant rectified the mistake and paid the tax alongwith interest.
 - d) From the record, it does not appear to be a habitual offender and as the appellant was filing returns of Income within due dates, it is deemed that the appellant is complying with law.
9. The appeal of the appellant is allowed with regard to condonation of delay and the penalty is also deleted for the reasons mentioned above.
10. The appeal of appellant is allowed.

Order pronounced in the open court on 11th November, 2024.

Sd/-
(Narender Kumar Choudhry)
Judicial Member

Sd/-
(Omkareshwar Chidara)
Accountant Member

Mumbai : 11.11.2024

Copy of the Order forwarded to :

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

//True Copy//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai