

आयकर अपीलीय अधिकरण
दिल्ली पीठ "एस एम सी", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आअसं.70/दिल्ली/2021 (नि.व. 2010-11)
ITA No.70/DEL/2021 (A.Y.2010-11)

Trident Sales Corporation,
T-23A, Phase-III, DLF City, Block-T,
Lane 23, Gurgaon, Haryana 122001
PAN: AAFFT-1874-N

..... अपीलार्थी/Appellant

बनाम Vs.

Commissioner of Income Tax(Appeals)-1
Aaykar Bhawan, Udyog Vihar, Phase-V, Gurgaon,
Haryana 122011

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Lalit Mohan, Chartered Accountant
Ms. Monika Aggarwal, Advocate

प्रतिवादीद्वारा/ Respondent by : Shri Sanjay Tripathi, Sr. DR

सुनवाई की तिथि/ Date of hearing : 20/09/2024

घोषणा की तिथि/ Date of pronouncement: : 18/12/2024

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-1, Gurgaon (hereinafter referred to as 'the CIT(A)') dated 21.02.2019, for assessment year 2010-11.

2. This appeal is time barred by 651 days. The assessee has filed an application seeking condonation of delay in filing of appeal, supported by an affidavit. A perusal of the affidavit reveals that the delay in filing of present appeal is caused due to non-reporting of the result of first appeal by the then counsel of the

assessee Shri Sahil Goyal. In support of the reasons given in the affidavit for condonation Shri Parmil Kumar Goyal, Advocate has also filed a separate affidavit wherein he has admitted that one of his colleague/staff Sahil Goyal who was handling the assessee's case before the CIT(A) had left the office in February 2019 and thereafter the status of appeal filed before the CIT(A) could not be traced. It was only when the assessee contemplated to settle the issue under VSVS 2021 it transpired that the CIT(A) had already dismissed the appeal in February 2019.

3. The Id. DR has vehemently opposed assessee's application seeking condonation of delay in filing of appeal. The Id. DR submitted that inordinate delay of 651 days in filing of appeal is unpardonable. The assessee has given vague and general reasons for condonation of delay. The Id. DR placed on reliance various decisions to counter the reasons given in the application/affidavit for condoning delay some of the decisions on which reliance is placed by the Id. DR are:

(i) Baroda Rayon Corporation Ltd. Gujarat 87 STC 266;

(ii) Ramlal and others vs. Rewa Coalfields Ltd. AIR 1962 SC 361;

(iii) Agricultural Market Committee vs. ADIT in ITA No. 1275/Hyd/2022 decided on 10.02.2012;

(iv) Sri Venkatesa Paper & Boards Ltd. 98 ITD 200 (Chennai); and

(v) Prabhudas Kishoredas Tobacco Products P. Ltd., vs. DCIT 48 ITD 543 (Ahd.)

4. Submissions of both sides heard on the issue of condonation of delay, reasons given in the condonation application examined and case laws on which Id. DR has placed reliance considered.

5. The Hon'ble Apex Court in the case of *Collector Land Acquisition vs. Mst. Katiji & Ors. 167 ITR 471* has held that liberal approach should be adopted while

dealing with an application praying for condonation of delay. Refusing to condone delay can result in meritorious matter being thrown out at the very threshold and cause of justice being defeated. Pedantic and hyper technical approach should not be adopted while dealing with an application for condonation of delay.

6. The Hon'ble Apex Court in the case of Ram Nath Sao @ Ram Nath Sahu & Others vs Gobardhan Sao and Others has held that the expression "sufficient cause" within the meaning of Section 5 of the Limitation Act or Order 22 Rule 9 of Civil Procedure Code or any other similar provision should receive a liberal construction so as to advance substantial justice. The courts should not proceed with the tendency of finding fault with cause shown and reject the petition by a slipshod order in over jubilation of disposal derive. Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bonafide can be imputed to the defaulting party.

7. Thus, in the facts of the case and in light of law laid down by the Hon'ble Apex Court in dealing with the condonation application, I am of considered view that the reasons given by the assessee causing delay in filing of appeal appears to be bonafide and sufficient. The delay in filing of appeal does not appear to be intentional. Hence, the delay in filing of appeal is condoned and appeal is admitted for adjudication on merits.

8. The assessee in appeal has assailed the order of CIT(A) on jurisdictional issue as well as on merits. The concise grounds raised by the assessee in appeal (including additional grounds raising legal issues) are as under:-

"1. That in absence of any valid notice under section 148 of the Act having been issued and served on the appellant prior to framing of impugned order of

assessment, impugned order of assessment under section 147/143(3) of the Act is also without jurisdiction and therefore, deserves to be quashed as such.

2. *That the alleged unsigned notice u/s 143(2) of the Act dated 6/9/2017 is invalid as the same was issued and served on the spot on the date of filing of return of income and therefore the impugned order of assessment dated 15/12/2017 u/s147/143 (3) of the Act is without jurisdiction and deserves to be quashed as such.*

3. *That the learned Commissioner of Income Tax (Appeals) has grossly erred both in law and on facts in upholding the initiation of proceedings under section 147 of the Act and, completion of assessment under section 147/143(3) of the Act without appreciating that the same were without jurisdiction and hence deserved to be quashed as such.*

4. *That the learned Commissioner of Income Tax (Appeals) has grossly erred both in law and on facts in estimating the net profits of the appellant at Rs. 6 lakhs on adhoc basis, for the year under consideration."*

9. Shri Lalit Mohan, appearing on behalf of the assessee submits that in ground of appeal no. 1 the assessee has assailed validity of reopening as no notice u/s. 148 of the Act was ever served on the assessee. The assessee placed on record copy of the notice u/s. 148 of the Act dated 29.03.2017 along with a copy of envelop to substantiate that the notice issued by the Department was returned back by postal authorities un-served. Hence, the notice u/s. 148 of the Act was never served on the assessee.

9.1. The Id. AR further submitted that the AO issued unsigned notice u/s. 143(2) of the Act dated 06.09.2017 to the assessee. The said notice was served on the assessee, the day assessee furnished copy of return of income to the Assessing Officer. The Id. AR fairly stated that no return of income was filed by the assessee u/s. 139 of the Act. The assessee furnished copy of return of income dated 05.09.2017 to the Assessing Officer on 06.09.2017. The AO immediately issued and handed over notice u/s. 143(2) of the Act to the assessee. The said notice without

jurisdiction as the same has been issued without signatures and without proper application of mind by the AO.

10. The Id. AR further submitted that as per the reasons recorded for reopening the assessment, notice u/s. 148 of the Act was issued on the basis of information received from investigation wing that there were deposits amounting to Rs.1,47,29,009/- in Yes Bank Ltd. Current Account No. 283800002033 of the assessee. During assessment proceedings after examination of documents on record, the AO concluded that the assessee failed to prove nature and source of transactions amounting to Rs.1,22,87,000/- . The AO thereafter estimated net profit at rate of 8% on such receipts and made addition of Rs.9,82,960/-. The assessee carried the issue in appeal before the CIT(A). The CIT(A) restricted estimated addition to Rs.6,00,000/-. The Id. AR submitted that the assessee has not carried out any business during the relevant period the bank account of the assessee was used to rotate the funds of sister concerns. The CIT(A) has recorded this fact that these are the bank transactions between the assessee and two partners i.e. Gaurav Nagpal & Rahul Nagpal and a company M/s. Rudrakash Laminates P. Ltd. were both aforementioned persons are directors. These financial transactions are routed from one person to another and there is nothing on record to show that these were trading transactions. The Id. AR thus prayed for deleting the addition on merits as well.

11. Per contra, the Id. DR placed reliance on the assessment order and the order of CIT(A). The Id. DR submitted that the assessee participated in assessment proceedings, hence, by virtue of provisions of section 292BB of the Act, the plea taken by the assessess, non service of notice u/s. 148 of the Act and issuance of

notice u/s. 143(2) of the Act without signatures would not impair assessment proceedings.

12. Both sides heard, order of the authorities below examined. The assessee has raised jurisdictional issue assailing assessment u/s. 147 r.w.s 148 of the Act, as well as addition on merits. The case of the assessee is that the assessee has not filed return of income for the impugned assessment year and no notice u/s. 148 of the Act was ever served on the assessee. To substantiate non service of notice the assessee has placed on record copy of envelop in which the alleged notice u/s. 148 of the Act was sent to assessee by the Department. It is further submitted that the assessee filed return of income on 05.09.2017 and copy of same was furnished to the AO on 06.09.2017. The AO immediately handed over notice u/s. 143(2) of the Act to the assessee on 06.09.2017 itself without signatures. The assessee has further alleged that in reasons recorded for reopening, the reasons for issuance of notice u/s. 148 of the Act is deposit of huge amount of Rs.1,47,29,009/- in the bank account of the assessee, whereas while passing the assessment order, the AO has made estimated addition at the rate of 8% on Rs.1,22,87,000/-. Since, the addition has not been made for which the assessment was reopened, the assessment is liable to be quashed.

13. The assessee has *inter alia* assailed validity of the assessment on the ground that on 06.09.2017 when the assessee furnished return of income before the AO on the same date notice u/s. 143(2) of the Act along with notice u/s. 142(1) of the Act was issued to the assessee. This fact is evident from the assessment order as well. The Division Bench of the Tribunal in the case of *Hemant Mittal vs. ITO in ITA No. 5161/Del/2019 for AY 2010-11* decided on 27.05.2020 has considered an identical

issue; wherein Assessing Officer had served notice u/s. 143(2) of the Act to the assessee on the same date, the assessee furnished return of income u/s. 139 of the Act. The Tribunal quashed the assessment order, wherein the provisions of section 143(2) of the Act were mechanically followed and sanctity of the provisions were not maintained. For the sake of ready reference the relevant extract of the Tribunal order is reproduced here in under:-

*“18. The present case is one-step higher than third situation. In the present case, the return of income filed by the assessee was accompanied with the competition of income, the trading and profit and loss account as well as the balance sheet of the assessee along with the fixed assets account and capital account. At the time of issue of notice, the AO was merely having information about cash deposit of 1297900 in his savings bank account maintained with Indusind Bank Limited. AO did not have any information about what kind of business assessee is doing, whether the bank account in which alleged is deposited, whether that appears in the balance sheet of the assessee. Whether the level of income shown by the assessee justifies the amount of cash deposited etc. In such a situation, it can be said that, the AO didnot thought it “necessary’ but issued the notice in a mechanical manner.If assessment order is read carefully, it shows that not only he issued the notice u/s143 (2)/142 (1) of the act **but also issued questionnaire. In addition, that too along with the notices was served on the spot when he went to file the return to the counsel of the assessee.** In such a situation the decision of the honourable Delhi High Court, this clearly says that before issue of notice, AO has to examine the return filed by the assessee. In the present case, not only that the AO issued the notice on the spot to the counsel of the assessee but also issued questionnaire along with that. In such a situation, we are unable to sustain the assessment order passed by the Ld. assessing officer. Thus, we quash the assessment order passed by the Ld. AO u/s143 (3) of the act on 28/12/2016.”*

14. As narrated above, the facts in the instance case are no different. The AO handed over notice u/s. 143(2) & 143(1) of the Act to the assessee on the same day when the assessee furnished Return of Income.

15. Thus, in facts of the case and the decision referred above, I find merit in ground no. 2 of appeal. Hence, for parity of reasons the assessment order is quashed and appeal of the assessee is allowed.

Order pronounced in the open court on Wednesday the 18th day of December, 2024.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

दिल्ली/Delhi, दिनांक/Dated 18/12/2024

NV/-

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI