

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'SMC' BENCH, KOLKATA**

Before Shri Duvvuru RL Reddy, Vice-President (KZ)

**I.T.A. No. 1272/KOL/2024
Assessment Year: 2009-2010**

***Sumita Roy Chowdhury,.....Appellant
C/o. Mahadev Ghosh, Advocate,
BF-199, Salt Lake City,
Kolkata-700064
[PAN:AHOPR1722P]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-48(1), Kolkata,
3, Government Place (West),
Kolkata-700001***

Appearances by:

Shri Mahadev Ghosh, Advocate, appeared on behalf of the assessee

Shri Nicholash Murmu, Addl. CIT, D.R., appeared on behalf of the Revenue

Date of concluding the hearing: January 07, 2025

Date of pronouncing the order: January 08, 2025

ORDER

The present appeal is directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Appeals)-14, Kolkata dated 30th December, 2016 passed for Assessment Year 2009-10.

2. Brief facts of the case are that the assessee is an individual, who filed her return of income declaring total income at NIL. The

return was processed under section 143(1) of the Income Tax Act, 1961. The case was selected for scrutiny under CASS and notice under section 143(2) was issued on 23rd August, 2010 and served on the assessee. Subsequently notice under section 142(1) was issued on 12th August, 2011 and duly served upon the assessee. The assessee's representative filed the supporting documentary evidences and explained the return. On perusal of the return, the assessee claimed deduction under section 80IB in a defective manner. Accordingly, it was communicated to the assessee by letter dated 17th November, 2011 that there happens to be certain deficits in the eligibility of her claim for the said deduction and the reasons were invited to show-cause why the claim of deduction under section 80IB would not be disallowed in the impugned assessment year. There was no compliance from the assessee and the assessment was completed under section 144 and also initiated penalty proceedings under section 271(1)(b) of the Income Tax Act, 1961 was initiated for failure to comply with the terms of notices issued under section 143(2) and 142(1) and also denied the claim of the assessee under section 80IB. On being aggrieved, the assessee preferred an appeal before the Id. CIT(Appeals).

3. The Id. CIT(Appeals) has given twelve opportunities to the assessee to substantiate her claim, but the appellant does not file the written submissions and does not represent the case before the Id. CIT(Appeals). Thereafter the Id. CIT(Appeals) dismissed the appeal on 30th December, 2016.

4. On being aggrieved, the assessee preferred an appeal before the ITAT.

5. The appeal is time barred by 2655 days.

6. The Id. Counsel for the assessee filed a condonation petition saying that she had handed over the appeal papers to one Shri Tapas Kumar Majumder, who is practicing Advocate, but he did not file the appeal. Thereafter she engaged another Counsel namely Shri Ashok Chatterjee, FCA, but he has not filed the appeal. Subsequently she handed over to another counsel and he filed the appeal with a delay of 2655 days.

7. I have heard both the sides. It was the submission of the Id. A.R. for the assessee that the assessee had handed over the appeal papers to one Shri Tapas Kumar Majumder, who is an Advocate but he did not file the appeal in time. Thereafter she handed over the appeal papers to the assessee. Then the assessee searched for a new Lawyer and in the month of May, 2018, the assessee had appointed one Mr. Ashok Chatterjee, FCA for filing the appeal before the ITAT, Kolkata with a condonation petition for delay in filing the appeal, but he did not file the appeal. It was the further submission of the Id. A.R. that on May 08, 2024, the assessee was called for a meeting for discussion of the appeal by her Counsel Shri Ashok Chatterjee entrusted the matter to one Shri Mahadev Ghosh, who is an Advocate, for filing of the appeal before the ITAT, Kolkata, finally he filed the appeal before ITAT.

8. It was the further submission of the assessee's counsel that Shri Ashok Chatterjee, FCA and Shri Tapas Kumra Majumder, Advocate, failed to file the appeal due to their irresponsible attitude delay of 2655 days was occurred in filing the appeal before the ITAT. He further submitted that there was no fault on the part of assessee for delay of filing the appeal before the ITAT. He further submitted that the affidavits of Shri Ashok Chatterjee and Shri Taps Kumar Majumder were filed before the ITAT for perusal. He pleaded to condone the delay of 2655 days and to admit the appeal.

9. On the other hand, it was the submission of the ld. Departmental Representative that there is a huge delay of 2655 days and before the ld. Assessing Officer the assessee did not respond to the notices issued by the ld. Assessing Officer regarding the claim of deduction. He further submitted that the assessee preferred an appeal before the ld. CIT(Appeals) and the ld. CIT(Appeals) has given twelve adjournments, but there was no response from the assessee to substantiate her claim. Thereafter the assessee preferred an appeal before the ITAT with a huge delay of 2655 days. Therefore, the attitude of the assessee clearly establishes that she has not pursued with her Counsels about filing of the appeals. Thus, it indicates the gross negligence on the part of assessee. There is no sufficient cause to condone huge delay of 2655 days. Therefore, he pleaded to dismiss the appeal filed by the assessee.

10. I have perused the material available on record. It is an admitted fact that the assessee neither appeared before the ld.

Assessing Officer nor before the ld. CIT(Appeals). Before the Tribunal, she filed an appeal with a huge delay of 2655 days. The only contention of the assessee is that she handed over the appeal papers to one Advocate and one Chartered Accountant to file an appeal but appeals were not filed before the ITAT. Therefore, huge delay was occurred due to non-action of her ld. previous Counsels. On perusal of the affidavit filed by Shri Ashok Chatterjee, the appeal papers were handed over to him in the month of May, 2018, but till May, 2024, the assessee has not pursued the matter. On 08.05.2018, she was called for a meeting by Shri Ashok Chatterjee, then Shri Ashok Chatterjee handed over the appeal papers to one Shri Mahadev Ghosh in May 2024, which clearly indicates that after handing over the appeal papers to Shri Ashok Chatterjee, she has not pursued matter for filing of the appeal before ITAT. Therefore, I am of the considered view that it is a gross negligence on the part of assessee. Merely handing over the appeal papers to the ld. counsel is not sufficient to say that she has acted with due diligence. In the present case on hand, there is a huge delay in filing the appeal and delay is due to negligence act of the assessee only. Moreover, before the ld. Assessing Officer as well as the ld. CIT(Appeals) the assessee has not appeared even inspite of issuance of twelve notices by ld. CIT(Appeals). All these acts are clearly establish that the assessee is not due diligence. Therefore, I am of the firm view that it is not a fit case to condone the huge delay of 2655 days. The condonation petition filed by the assessee is dismissed.

11. In the result, the appeal filed by the assessee is dismissed in limine.

Order pronounced in the open Court on 08/01/2025.

Sd/-
(Duvvuru RL Reddy)
Vice-President (KZ)

Kolkata, the 8th day of January, 2025

- Copies to :*(1) *Sumita Roy Chowdhury,*
C/o. Mahadev Ghosh, Advocate,
BF-199, Salt Lake City, Kolkata-700064
- (2) *Income Tax Officer,*
Ward-48(1), Kolkata,
3, Government Place (West), Kolkata-700001
- (3) *Commissioner of Income Tax (Appeals)-14,*
Kolkata;
- (4) *CIT - , Kolkata;*
- (5) *The Departmental Representative;*
- (6) *Guard File*
- TRUE COPY*

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata

Laha/Sr. P.S.